intersex Asia

Intersex Justice in Asia

Regional Comparative Perspective

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## Regional Comparative Perspective

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# List of Abbreviations

- **CBO:** Community-Based Organisation
- **CRVS:** Civil Registration and Vital Statistics
- **DSD:** Disorders of Sex Development (Pathologizing term)
- **IGM:** Intersex Genital Mutilation
- **LGR:** Legal Gender Recognition
- **SOGIESC:** Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics

# Executive Summary

This comprehensive comparative research report synthesizes primary data from 12 Asian jurisdictions- Bangladesh, Cambodia, India, Indonesia, Laos, Malaysia, Nepal, Pakistan, Philippines, Singapore, Thailand, and Vietnam- to assess the status of human rights, bodily integrity, and legal recognition for intersex populations. Grounded in the Asian Intersex Statement 2023, the report identifies a region characterized by profound legal and medical disparities, yet unified by a systemic failure to protect the fundamental rights of intersex people.

A critical finding is the universal violation of bodily integrity. Across the region, irrespective of the legal system (common law, civil law, or religious law), medical interventions on intersex infants continue largely unregulated. In India and Vietnam, these are often framed as "corrective" necessities, while in Malaysia and Indonesia, religious interpretations frequently mandate surgical assignment to a binary sex. Conversely, Pakistan and Nepal have pioneered rights-based legal recognition frameworks that partially decouple identity from medical intervention, yet implementation lags significantly behind legislation.

The report also highlights a "data void" in Laos and Cambodia, where intersex populations remain virtually invisible in state policy. Furthermore, the conflation of intersex traits with transgender identities (e.g., *Hijra* in Bangladesh, *Waria* in Indonesia) complicates specific advocacy for bodily autonomy, often subsuming distinct intersex needs under broader SOGIE frameworks. This report serves as an urgent call to action for governments to align national laws with international human rights standards, specifically by depathologizing diverse bodies and ensuring that medical interventions are consensual, accessible, and free from coercion.

# 1 INTRODUCTION

# 1. Introduction

## 1.1 Intersex Asia

Intersex Asia is an autonomous regional network dedicated to the promotion and protection of the human rights of intersex people in Asia. Our mandate is rooted in the principles of bodily autonomy, self-determination, and depathologization. We advocate for a region where diverse sex characteristics are celebrated rather than corrected, and where legal systems recognize the diversity of human existence without imposing binary medical requirements.

## 1.2 Purpose of the Comparative Study

By systematically analyzing the legal, medical, and social landscapes of 12 distinct countries, this report aims to:

1. **Benchmark Progress:** Evaluate national laws against the standards set by the Asian Intersex Statement 2023.
2. **Identify Trends:** Highlight regional patterns of discrimination, medicalization, and resilience.
3. **Inform Advocacy:** Provide evidence-based recommendations to dismantle systemic barriers to health and justice.

## 1.3 Methodology

This report relies strictly on primary data collected via Intersex Asia's comprehensive country research reports. The analysis adopts a comparative human rights approach, scrutinizing the *de jure* legal frameworks alongside the *de facto* lived realities of community members in the 12 focus countries. The comparative analysis is qualitative, identifying thematic convergences and divergences across the region.

## 1.4 The Asian Intersex Statement 2023: Analytical Framework

The Asian Intersex Statement 2023 serves as the backbone of this analysis. Its 10 thematic areas provide a holistic lens through which to assess state performance. The Statement asserts that human rights are indivisible. This framework moves beyond a purely medicalized view of health, positioning access to care and legal recognition as fundamental determinants of human dignity.

# 2 REGIONAL THEMATIC ANALYSIS

# 2. Regional Thematic Analysis

## 2.1 Protecting Intersex People's Bodily Integrity

The right to bodily integrity is universally compromised across the region. The prevailing medical model views intersex traits as "defects" or "disorders" (DSD) requiring surgical "correction," often performed on infants who cannot consent.

- **Religious and Cultural Mandates:** In Malaysia, the National Fatwa Committee's rulings significantly influence medical practice. While "sex change" is generally forbidden, surgeries to "clarify" the sex of a *khunsa* (intersex person) are permitted and encouraged to facilitate religious duties (e.g., inheritance, burial rites). This creates a religious mandate for non-consensual surgery. Similarly, in Indonesia, social pressure to fit into a binary gender for religious conformity drives parents to authorize early surgeries, viewing intersex bodies as "imperfect" and in need of "fixing" to avoid social shame.
- **Medical Paternalism and Pathologization:** In Vietnam, the Civil Code (2015) allows for the "re-determination" of sex for those with "congenital defects," effectively codifying a pathologizing framework where legal recognition is contingent upon medical intervention. In India, despite the progressive *NALSA* judgment recognizing self-determination, unregulated medical surgeries on intersex infants (often termed "genital normalization") remain rampant in private and public hospitals. Intersex activists have had to petition bodies like the Delhi Commission for Protection of Child Rights to intervene, as the medical establishment largely views these surgeries as standard care.
- **Absence of Protections:** Except for a few, most Asian countries lack any specific legal framework regarding intersex medical interventions. This legislative silence allows medical practitioners to operate with impunity, often guided by outdated medical textbooks that prioritize "cosmetic" normalcy over sexual function or bodily autonomy.
- **State-Sanctioned Intervention: Singapore** presents a highly medicalized environment where the state adopts a paternalistic role. Intersex traits are managed strictly within a medical framework, with no legal prohibitions against non-consensual cosmetic genital surgeries. The state's focus on "Asian family values" reinforces the binary, leaving no space for ambiguous bodies.
- **Emerging Resistance:** In Nepal and Pakistan, while surgeries continue, there is a growing, vocal movement challenging these practices. Nepali activists have highlighted how the medical community's lack of awareness leads to harmful interventions, often confusing intersex traits with other conditions.

## 2.2 Protecting Intersex People from Discrimination in All Areas

Discrimination against intersex people is systemic and multifaceted, often stemming from the lack of legal recognition of sex characteristics as a protected ground.

- **Legislative Gaps:** Most countries in the region, including Cambodia, Laos, Malaysia, Indonesia, and Singapore, do not explicitly prohibit discrimination on the basis of "sex characteristics." Discrimination is often fought under broader (and often inadequate) "sex" or "gender" provisions. In the Philippines, despite the filing of the SOGIE Equality Bill, national protection remains elusive, leaving intersex Filipinos reliant on a patchwork of local ordinances that vary in effectiveness.
- **Workplace Exclusion:** In Vietnam, the Labor Code lacks specific protections for intersex individuals. Reports indicate that intersex people face significant barriers in recruitment due to discrepancies between their appearance and legal documents, forcing many into the informal economy. In Bangladesh, the conflation of intersex people with the *Hijra* community subjects them to the specific socio-economic marginalization faced by *Hijras*, often restricting their employment options to traditional *Hijra* occupations (collecting alms, blessing ceremonies) rather than mainstream employment.
- **Social Stigma and Family Rejection:** In Thailand, despite a global reputation for tolerance, intersex individuals report deep-seated stigma within families. The pressure to conform to a binary gender often leads to concealment of intersex status, resulting in isolation. In India, discrimination begins at birth, with reports of infanticide or abandonment of intersex infants, particularly those assigned female at birth who develop virilized traits.

## 2.3 Health and Other Public Services

Access to intersex-affirming healthcare is virtually non-existent, with public services often becoming sites of trauma rather than care.

- **Pathologizing Medical Gaze:** In Pakistan, healthcare providers frequently lack the knowledge to treat intersex-specific health issues, viewing them solely through a disability or "DSD" lens. This leads to a profound mistrust of the medical system. Similarly, in Indonesia, the medical curriculum does not cover intersex human rights, leading doctors to view intersex bodies as puzzles to be solved rather than patients to be cared for.
- **Lack of Specialized Care:** In Laos and Cambodia, the general healthcare infrastructure is under-resourced, and specialized care for intersex individuals (e.g., hormone replacement therapy, post-surgical support) is entirely absent. Intersex people often have to seek expensive care abroad or resort to unsupervised self-medication.
- **Mental Health Crisis:** Across the region, particularly in Singapore and Thailand, there is a severe lack of mental health support tailored to the specific trauma of non-consensual surgeries and secrecy. In Nepal, mental health services are

largely confined to the capital and are often not sensitized to intersex issues, leading to further alienation.

- **Conflation with Trans Health:** In India and the Philippines, intersex health needs are often lumped together with transgender health needs (e.g., access to hormones). While there is overlap, the specific needs of intersex people (e.g., consequences of childhood surgeries, specific hormonal needs different from transition-related care) are often overlooked in "LGBT-friendly" clinics.

### 2.4 Education

Educational institutions are primary sites of exclusion, where rigid binary norms enforce conformity and punish difference.

- **Bullying and Dropouts:** In Vietnam, schools are reported to be unsafe environments where teachers often uphold myths that gender diversity is a "disease," leading to rampant bullying and high dropout rates among intersex youth. In Thailand, strict uniform policies enforced along male/female lines force intersex students into uncomfortable conformity. Students whose physical development does not align with their assigned sex/gender marker face disciplinary action or ridicule.
- **Curriculum Erasure:** Across Malaysia, Indonesia, and Bangladesh, national curricula do not include comprehensive sexuality education (CSE) that covers intersex variations. This invisibility perpetuates the "myth of the binary" and fosters an environment of ignorance and intolerance. In Pakistan, educational materials are devoid of references to bodily diversity, leaving intersex children without language to understand their own bodies.
- **Institutional Barriers:** In Nepal, discrepancies between a student's gender presentation and their legal documents have historically prevented gender-diverse students from taking university exams. Although there have been some legal victories, administrative hurdles persist, effectively barring many from higher education.

### 2.5 Hate Speech and Crime

Hate speech against intersex people is often fueled by religious fundamentalism, misconceptions, and a lack of legal recourse.

- **Religious-Based Incitement:** In Indonesia and Malaysia, rising religious conservatism has led to an increase in hate speech targeting gender diverse bodies, often framed as a threat to "family values" or "natural order." Intersex individuals are often collateral damage in broader anti-LGBT campaigns.
- **Digital Harassment:** In highly connected nations like Thailand, Singapore, and the Philippines, social media serves as a platform for cyberbullying. While the Philippines has the *Safe Spaces Act*, its application to intersex-specific slurs is untested and ambiguous.

- **Conflation and Violence:** In Pakistan and Bangladesh, intersex people are frequently conflated with transgender people and *Hijras*. Consequently, they become targets of the high levels of physical and sexual violence directed at these communities. The lack of specific legal protection for "sex characteristics" means these hate crimes are often unprosecuted or prosecuted under general assault laws that fail to capture the bias motive.

### 2.6 Gender Marker Registration at Birth

The binary registration system is a universal failure across the region, forcing intersex infants into categories that do not fit their reality.

- **Forced Binaries:** All 12 countries, including Cambodia, Laos, and Singapore, enforce strict male/female registration at birth. There are no provisions for a provisional assignment or an "intersex" marker for infants. This bureaucratic rigidity forces parents and doctors to assign a sex immediately, often precipitating unnecessary surgeries to "match" the chosen marker.
- **Bureaucratic Hurdles:** In Bangladesh, birth registration is mandatory and strictly binary. Intersex babies cannot be registered as "Hijra" (which is an adult identity), leading to a lifetime of documentation mismatch. In Vietnam, the inability to register a child with ambiguous genitalia can lead to delays in obtaining a birth certificate, which in turn blocks access to health insurance and schooling, creating a cycle of exclusion from birth.
- **Post-Birth rigidity:** In Malaysia, changing a gender marker assigned at birth is notoriously difficult, often requiring extensive medical proof of "irreversible" gender reassignment, which creates a legal trap for intersex people who may not want or cannot undergo such procedures.

### 2.7 Legal Gender Recognition

Legal gender recognition (LGR) varies widely, ranging from progressive self-determination to restrictive medicalization and the total absence of recognition.

- **Rights-Based Models:** Pakistan stands out with the *Transgender Persons (Protection of Rights) Act 2018*, which allows for self-perceived gender identity on documents, including an "X" marker. While primarily framed for transgender people, it provides a legal avenue for intersex people (often termed *Khawaja Sira*) to obtain documents without medical hurdles. Nepal similarly allows for an "Other" category based on self-identification, a significant achievement in the region.
- **Medicalized Models:** Vietnam's Civil Code (2015) and Singapore's legal framework allow for gender marker changes but only *after* full surgical transition (often including sterilization). This creates a high barrier that violates bodily integrity, forcing individuals to choose between legal recognition and physical autonomy.

- **Prohibitive Contexts:** In Malaysia, legal precedents effectively bar the changing of gender markers on the national ID (MyKad) for Muslims, and it is exceptionally difficult for non-Muslims. Laos and Cambodia lack any clear administrative procedure for LGR, leaving intersex people in a state of legal limbo where their documents never match their lived reality.
- **"Third Gender" Limitations:** In India and Bangladesh, while "Third Gender" or "Hijra" categories exist, they are often culturally specific and may not be suitable for all intersex people, particularly those who identify within the binary (as men or women) but need recognition of their specific biological history.

### 2.8 Access to Justice and Redress

Access to justice is hindered by the lack of legal standing, prohibitive costs, and the fear of re-victimization.

- **Lack of Legal Aid:** In Vietnam and Cambodia, legal aid systems do not prioritize or explicitly cover discrimination cases based on sex characteristics. This makes it financially impossible for most intersex people to challenge medical malpractice or employment discrimination.
- **Impunity and Police Bias:** In the Philippines, while the Commission on Human Rights investigates violations, the lack of a comprehensive anti-discrimination law means perpetrators often go unpunished. In Pakistan and Bangladesh, intersex individuals often face harassment from police officers themselves, making the police station a site of danger rather than protection.
- **Judicial Activism vs. Implementation:** In India, the Supreme Court has been a proactive defender of rights (*NALSA*, *Puttaswamy*), but implementation at the lower court and police station level is poor. Intersex people struggle to translate high-level constitutional rights into local justice.

### 2.9 Data Collection: Addressing Research Gaps

A systemic "data void" characterizes the region, where intersex people are statistically invisible.

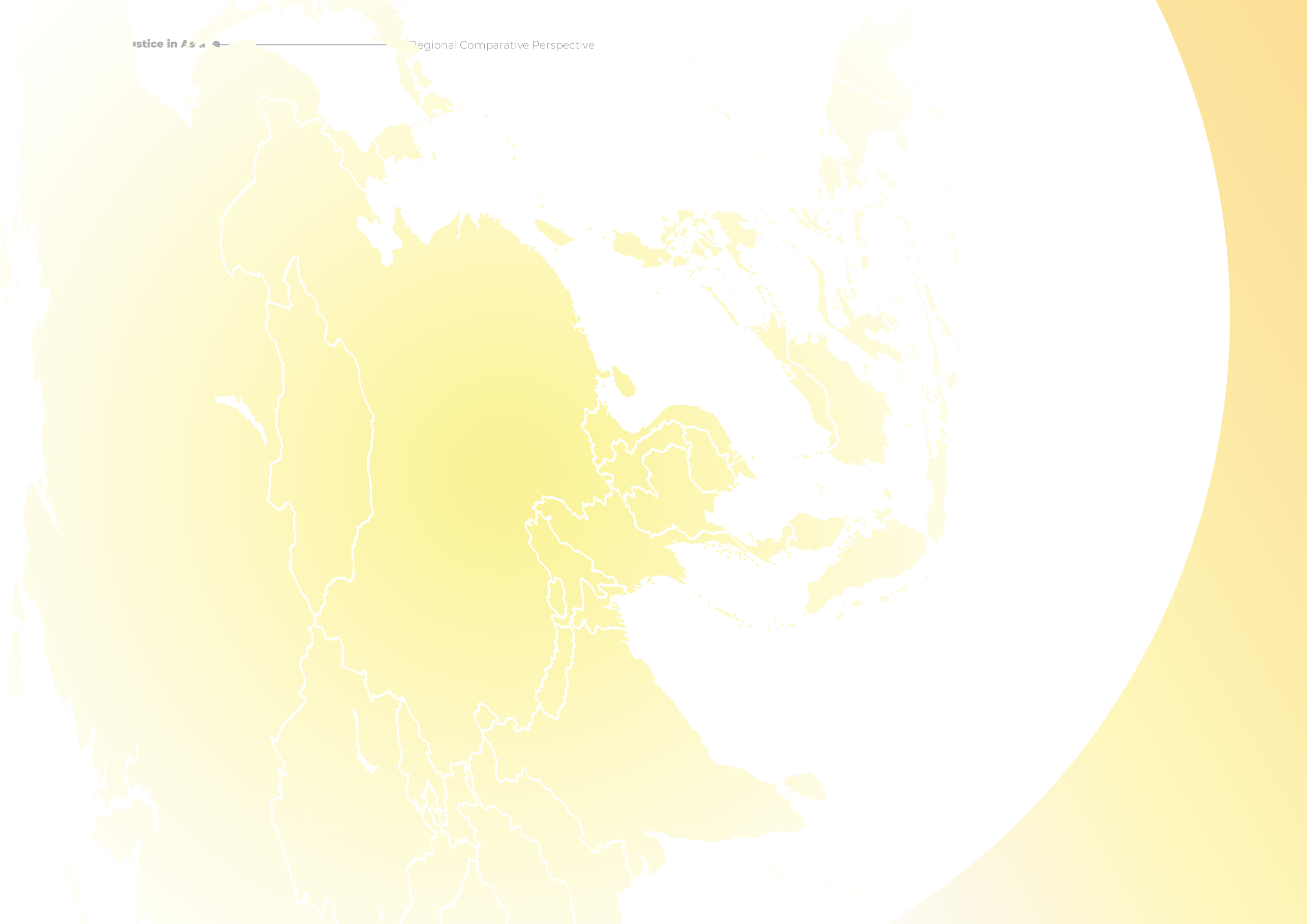
- **Conflation with MSM/Transgender:** In Thailand and Indonesia, national health surveys often categorize intersex people under "MSM" or "Transgender," completely obscuring specific intersex health data. This leads to HIV funding being the only resource stream available, ignoring other critical health needs.
- **Census Erasure:** Countries like Cambodia, Laos, and Vietnam do not include intersex variations in their national censuses. This absence allows governments to claim that intersex people "do not exist" or are statistically insignificant, justifying the lack of targeted policies.
- **Emerging Efforts and Flaws: Nepal** has attempted to include "third gender" in its census, but enumerator bias, lack of training, and privacy concerns led to

severe undercounting. Pakistan's inclusion of trans/intersex people in the census was also marred by logistical failures and community distrust.

### 2.10 Inclusion in Emergency Policy Response

The COVID-19 pandemic exposed the fragility of social protections for intersex people.

- **Exclusion from Relief:** In **I**ndia, Nepal, and Thailand, intersex people often struggled to access government relief packages during the pandemic. Relief was frequently distributed based on binary gender documents or household units that intersex people (often estranged from family) could not access.
- **Healthcare Isolation:** In Malaysia and Indonesia, the diversion of healthcare resources to COVID-19 meant that intersex individuals requiring ongoing hormonal care or other specific treatments were left without access. The "essential services" definition rarely included intersex-specific healthcare.
- **Reliance on Civil Society:** Across the region, specifically in the Philippines and Vietnam, it was intersex and LGBT-led CBOs that stepped in to provide food, medicine, and shelter, highlighting the state's failure to include this population in its emergency planning.



# 3 COMPARATIVE TABLES

# 3. Comparative Tables

Table 1: Legal Status of Bodily Integrity and Medical Interventions

| Country | Laws Prohibiting Non-Consensual Surgery? | Cultural/ Religious Mandates for Surgery? | Medical Model | State Stance on Intersex Bodies |
|---|---|---|---|---|
| **Bangladesh** | No | Yes (Social pressure to "fix") | Pathologizing | Visible only as "Hijra" (Social welfare focus) |
| **Cambodia** | No | No specific mandate | Pathologizing | Invisible/Ignored |
| **India** | No (despite court petitions) | Yes (Social pressure) | Pathologizing | Recognizing (NALSA) but medically unregulated |
| **Indonesia** | No | Yes (Religious pressure to conform) | Pathologizing | Hostile/Pathologizing (Religious conservatism) |
| **Laos** | No | No specific mandate | Pathologizing | Invisible |
| **Malaysia** | No | Yes (Fatwas allowing "clarification") | Pathologizing | Religious/Medical policing of binary |
| **Myanmar** | No | No specific mandate | Pathologizing | Punitive (Colonial laws) |
| **Nepal** | No | Yes (Social pressure) | Pathologizing | Progressive recognition, poor implementation |
| **Pakistan** | No | Yes (Social pressure) | Pathologizing | Progressive recognition (Act 2018), medical lag |
| **Philippines** | No | Yes (Social pressure) | Pathologizing | Lacks national protection, reliance on LGUs |
| **Singapore** | No | Yes (Social policy) | Pathologizing | Paternalistic/Strict enforcement of binary |
| **Thailand** | No | Yes (Social pressure) | Pathologizing | Medical hub for surgery, weak local protections |
| **Vietnam** | No | Yes (Legal requirement for change) | Pathologizing | Medicalized recognition (Civil Code 2015) |

Table 2: Legal Gender Recognition (LGR) Frameworks

| Country | Self-Determination? | Medical Requirement? | Non-Binary/ Third Marker? | Key Legislation |
|---|---|---|---|---|
| **Bangladesh** | No (Hijra only) | No (for Hijra) | Yes (Hijra) | Hijra recognition (2013); excludes many intersex |
| **Cambodia** | No | N/A | No | No legal procedure exists |
| **India** | Yes (in theory) | Mixed (Certificate req.) | Yes (Transgender) | NALSA Judgement (2014); Transgender Act (2019) |
| **Indonesia** | No | Yes (Court Order) | No | Court requires medical evidence/ surgery |
| **Laos** | No | N/A | No | No legal procedure exists |
| **Malaysia** | No | Yes (Impossible) | No | Effectively barred by religious/civil courts |
| **Myanmar** | No | N/A | No | No legal procedure exists |
| **Nepal** | Yes | No | Yes (Other) | Supreme Court ruling (2007); Citizenship ID |
| **Pakistan** | Yes | No | Yes (X) | Transgender Persons Act (2018) |
| **Philippines** | No | N/A | No | No national LGR law; local ordinances only |
| **Singapore** | No | Yes (Surgery) | No | Surgery mandatory for marker change |
| **Thailand** | No | N/A | No | Gender Equality Act exists but no LGR law |
| **Vietnam** | No | Yes (Surgery) | No | Civil Code 2015 (requires medical intervention) |

Table 3: Social Inclusion and Anti-Discrimination

| Country | Anti-Discrimination Law (Sex Characteristics)? | Census Inclusion? | Emergency Relief Inclusion? | Primary Advocates |
|---|---|---|---|---|
| **Bangladesh** | No | No | No | Hijra CBOs |
| **Cambodia** | No | No | No | CCHR/Rainbow Community |
| **India** | Yes (Transgender Act covers intersex) | No | No | Srishti Madurai/Intersex Human Rights India |
| **Indonesia** | No | No | No | Kolektif Interseks/ Intersex Indonesia |
| **Laos** | No | No | No | Development Partners |
| **Malaysia** | No | No | No | Underground/SOGIE groups |
| **Myanmar** | No | No | No | Underground groups |
| **Nepal** | Yes (Constitution) | Yes (Flawed) | No | Campaign for Change (Intersex-led) |
| **Pakistan** | Yes (Trans Act 2018) | Yes (Flawed) | No | Trans activists |
| **Philippines** | No (Local ordinances only) | No | Limited | Intersex Philippines |
| **Singapore** | No | No | No | |
| **Thailand** | Yes (Gender Equality Act - weak) | No | No | Intersex Thailand |
| **Vietnam** | No | No | No | Intersex Vietnam |

# 4 CONCLUSION AND KEY RECOMMENDATIONS

# 4. Conclusion and Key Recommendations

The findings of this comparative research report present a region at a pivotal crossroads. While the spirit of the Asian Intersex Statement 2023—centered on bodily autonomy and human rights—is beginning to find legislative echoes in countries like Pakistan and Nepal, the broader regional trend remains one of pathologization, neglect, and erasure. The persistent criminalization or pathologization of diverse bodies in Malaysia, Indonesia, and Singapore, coupled with the strict medical gatekeeping in Vietnam, constitutes a systemic violation of the right to bodily integrity. Furthermore, the almost universal reliance on the informal economy for essential health needs constitutes a profound failure of public health governance.

To align with the Asian Intersex Statement 2023 and international human rights standards, Intersex Asia proposes the following recommendations:

## 4.1 Recommendations for Governments

1. **Prohibit Non-Consensual Medical Interventions:** All governments, particularly India, China, Thailand, and Singapore, must enact specific legislation banning medically unnecessary surgeries on intersex infants and children. Consent must be deferred until the individual is mature enough to provide it.
2. **Decouple LGR from Medicine:** Vietnam, Singapore, and Indonesia must remove surgical and medical requirements for legal gender recognition. The self-determination models of Pakistan and Nepal should be adopted and refined to ensure bureaucratic accessibility.
3. **Recognize Sex Characteristics as a Protected Ground:** Anti-discrimination laws in Philippines, Cambodia, and Malaysia must be amended or enacted to explicitly include “sex characteristics” to protect intersex people from discrimination in employment, education, and healthcare.
4. **Reform Data Collection:** National statistical bureaus must mandate the disaggregation of data. The practice of subsuming intersex populations under “MSM” or “Transgender” in Thailand and Indonesia must end. Accurate, specific data is the only foundation for effective policy.

## 4.2 Recommendations for Donors and Development Partners

1. **Direct Funding to Intersex-Led Groups:** Intersex issues are distinct from broader LGBT issues. Donors must provide dedicated funding to intersex-led organizations in Nepal, Philippines, and India to build capacity and autonomy, rather than funneling funds solely through larger LGBT umbrellas.
2. **Support Legal Advocacy:** Fund strategic litigation and legal aid clinics in Malaysia and Bangladesh to challenge discriminatory laws and practices.

### 4.3 Recommendations for Civil Society Organisations

1. **Regional Solidarity and Knowledge Exchange:** Facilitate South-to-South learning. Activists in restrictive environments like Laos and Vietnam can benefit from the strategies employed by peers in Pakistan and Nepal.
2. **Depathologize Language:** Civil society must rigorously adopt the language of the Asian Intersex Statement 2023, moving away from “DSD” and “disorder” terminology in all advocacy and educational materials.



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