



Protecting the Right to be free from Death by Measuring the Legal Regulation of Human Genetic Analysis

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Abstract

The crime of the forest and land was burning that occurred in Indonesia, especially in the city of Pontianak is an environmental crime that is very worrying and requires firm action from the government. Criminal sanctions against perpetrators of a forest and land fires are regulated in the Criminal Code, Law Number 32 of 2009 concerning Environmental Protection and Management, Law Number 39 of 2014 concerning Plantations and regulation of the Minister of the Environment Number 10 of 2010 concerning Pollution Prevention Mechanisms and/or the environmental Damage Related to the forest and/or Land Fires. There is a contradiction between article 187 of the Criminal Code and Article 56 paragraph (1) of the Plantation Law which clearly prohibits forest burning and article 69 paragraph (2) of the Law on Environmental Protection and Management. The purpose of this paper is to discuss environmental crimes by burning a forest and land, to examine the problem of conflict norms in the crime of the forest and land burning using normative research methods through a statutory approach, so as to find a solution to the conflict of norms.

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Introduction

Albert Einstein (А.А.Ивин, 1997) once said, "It is more difficult to formulate a problem than to solve it." Throughout the development of humanity, many scientific hypotheses have evolved, with both successes and failures, and continue to evolve to this day.

The focus of countries has shifted to issues such as human genetic science research, analysis, and engineering. One example of this is the Human Genome Project (HGP), an international scientific research project that aims to identify the base pairs that make up human DNA and to physically and functionally identify, map, and sequence all genes in the human genome.

The project began in 1990 and was completed in 2003. It remains the largest collaborative biological project in the world. Planning for the project began in 1984 by the US government and was officially launched in 1990. On 14 April 2003, it was announced that about 92% of the genome had been sequenced. The "complete genome" level was reached in May 2021, with only 0.3% of the genome being sequenced. (Surti, 2018) The final assembly was completed in January 2022. (Research N. H., 2024)

In late 2012, British Prime Minister David Cameron * announced the 100,000 Genomes Project, a project aimed at patients with rare diseases and their families with cancer, and in December 2018, the 100,000th human genome (Research, National Institute for Health, 2021) was sequenced.

In addition to these two projects, Japan's "Genetics Project for Rare and Underdiagnosed Diseases" and China's The "100,000 Genomes Project", the "Genomic Health Project" of the Commonwealth of Australia, the "Saudi Human Genome Project" of the Kingdom of Saudi Arabia, and the "Personalized Medicine Project" of the Republic of Estonia are being implemented. (Yuji Takahashi, 2021).

These projects have raised issues of data storage, security, privacy, and ethics. Since the 2000s, Western European countries such as Switzerland and Germany have adopted legislation specifically addressing issues related to genetic testing, focusing on protecting individuals with personal genetic information. For example, Estonia has passed the "Human Genius Research Act." (Human Genes Research Act, 2013).

While human genetic research may have significant benefits for medical and other scientific research, some researchers have emphasized the need to address the potential social consequences of mapping the human genome. Hans-Jörg Reinberger * writes, "The prospect of 'molecularizing' diseases and their potential for treatment will have a profound impact on what patients expect from medical care and on the understanding of disease by a new generation of physicians."

In addition, Asian countries (China, Japan, Korea, the Philippines, Singapore, Hong Kong, and Taiwan) have regulated human genetic information within the framework of laws. This prevents the illegal use of citizens' genetic information, which is a national treasure, and its use for research purposes in other countries. (Hannah Kim, 2024)

Some countries have a "Law on Genetic Diagnosis" The requirements for genetic testing are defined and aimed at protecting the right to privacy, preventing discrimination, and respecting and protecting the dignity of the individual based on its results and the genetic characteristics of the individual. In Mongolia, researchers such as Dr. J. Batsuuri and E. Enkhmaa have conducted research in the field of human genetics and security, and Dr. S. Ganbold, J. Oyuumaa, Sh. Purevdulam, O. Monkhtungalag, and D. Jivgaagünsel have conducted research in the field of forensic medicine and analysis. Sh. Dorjdamba and S. Byambasuren also conducted research on the prevalence of mental disorders and syndromes, which are negative consequences of inbreeding in the genealogy fund, from 1984 to 1992. In 1990, Dr. and Professor L. Narantsengel conducted a study on the prevalence of diseases caused by inbreeding among secondary school students. Research in the field of law is very scarce and, with the exception of forensic studies, it can be concluded that there is no research..

Research goals and objectives: The purpose of the research is to provide legal proposals on how countries regulate human genetic diagnosis and the scope of human rights to privacy. Within this goal, the following objectives are proposed. These include:

1. The concept of the right to inviolability and its legal regulation of human genetics
2. Comparative study of legal regulation of human genetics /within the framework of the right to inviolability/
3. The structure is as a way to protect the constitutional right to privacy through legal regulation of human

genetics.

Research hypothesis: In order to ensure the right to privacy, some countries regulate human genetics by adopting independent laws. This relationship is also regulated in the health sector, information security sector, insurance sector, and criminal law and laws related to punishment of violations. By comparing the laws of these countries, it is hypothesized that Mongolia can adopt independent laws and determine the scope of the right to privacy.

Research methodology: In addition to using legal scientific methods, the research methodology will include conducting research based on micro-comparison methods in the laws of countries related to human genetics, and drawing conclusions and suggestions.

Scope of the study: Since the scope of this study is within the scope of physical integrity or human genetic integrity, other rights will not be mentioned.

The novelty of the research: This study is conducted in the fields of biology, genetics, and health, and there is no major research conducted from the perspective of legal science. Although research on genetics has been conducted in the fields of criminology and forensics, which are branches of legal science, research conducted in the field of constitutional law is very scarce.

Theoretical and practical significance of the research: Research information on human genetic analysis and diagnosis is not common. During the process of human genetic analysis and diagnosis, the right to inviolability of a person and other related rights may be violated, and the interests and security of the country may be at risk. The importance of this research will be highlighted in creating appropriate legal regulations to prevent further violations of human rights.

In Mongolia, the Law on Animal Genetic Resources was adopted in 2017 and the Law on Genetic Resources in 2021. These laws have enacted laws on the genetics of animals, plants, and microorganisms, but the law on human genetics has not yet been enacted. In this sense, the research work is important to propose legal conclusions to regulate human genetic testing and diagnosis and related relations.

1. The Concept of The Right to be Free From Disease and its Ensurance Through the Legal Regulation of Human Genetic

Regarding Human Rights: The concept of rights is explained in S. Narangerel's commentary on the original text of the Law as "the type and extent of possible behavior of a specific person, state organization, nation, state or other subject (С.Нарангэрэл, 2008)." Regarding human rights, B. Chimid said that "the inherent nature and essence of a person" (Б.Чимид, 2004) and defined it as subjective rights.

the 6th-5th centuries BC, the concept of "citizens" and "their rights and duties" first emerged in city-states. 5th century BC It originated from the doctrine of natural or innate rights developed by the ancient Greek sophists in the 1st and 2nd

¹ Ian Donald Cameron, *former Prime Minister of the United Kingdom*. Politician.

² Hans-Jorg Rheinberger. Science historian.

centuries BC. It was enriched and developed by the natural law doctrine of the Roman jurists of the 1st (Ч.Энхбаатар, Үндсэн хуулийн эрх зүй, 2007) and 2nd centuries BC. Aristotle emphasized that “natural rights are rights that are immutable, eternal, and supreme, whether acknowledged or not.” (Х.Сэлэнгэ, 2013)

The legal status of individuals in medieval society was considered legally free, but members of society were “obligatory.” In 1215, as a result of a fierce struggle between the large feudal lords and the monarchy in England, King John was forced to sign the “Great Charter of Freedom.” (З.М.Черниловский, 1083) The main content of the Charter, which serves as the basic principle of law, is that “no free person shall be imprisoned, exiled from his country, or deprived of his honor without a lawful decision.” This document recognized the inviolability of human rights. (Ч.Нямсүрэн, 2017) The theory of natural rights is considered in four stages of development. During the Middle Ages, known as the Renaissance, (Н.Лүндэндорж, 2011) human rights were placed at the center of the system of legal values, and individual rights were placed in the structure of natural rights, which laid the foundation for the development of the idea of subjective rights.

The 1928 “Petition of Rights” and the 1979 “Habeas Corpus Act” were laws passed that unjustifiably restricted human rights and limited the powers of the state.

The term human rights is relatively new, having entered everyday language after the founding of the United Nations in 1945 after World War I. It is a contemporary term that replaced the term “inherent rights” with “the rights of Man.” This is due to the considerable controversy surrounding the term (Хенри Ж. Стайнер, 2000) “human rights”.

Since then, fundamental principles have been enshrined in documents such as the United States Declaration of Independence of 1776, the French Declaration of the Liberties of Man and the Citizen of 1789, the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966, and the European Union Charter of Human Rights.

While American historical sources and declarations used the terms “rights”, “inalienable” or “unalienable rights”, the French Declaration of the Rights of Man and of the Citizen distinguished between “human rights” and “citizens’ rights” and considered them separately. The Austrian Basic Law of 1867 strengthened the “universal rights of citizens by birth”. Since the middle of the 19th century, the rights stipulated in the constitution have been understood in the world legal literature as fundamental rights granted to every citizen. (Й.Изензее, 1994)

The concept of fundamental human rights is reflected in international norms as human rights and freedoms. In principle, the above content is the same and is interpreted in a broad manner, not limited by national laws. In line with this, countries with constitutions have reflected fundamental rights as human rights and freedoms. This basic “right to inviolability” includes (legal) rights, and it has been reflected in scholars, researchers, and international treaties and conventions as follows:

Regarding the right to privacy: Personal rights and freedoms are the sum of the possibilities to exercise all the conditions and possibilities of a person's private life, such as the right to freely express one's own opinions and beliefs, personal inviolability, respect for one's honor and reputation,

and the protection of one's private secrets. Personal rights and freedoms include natural inviolable rights that are inherent to every person from birth, and without these rights and freedoms, other rights and freedoms lose their meaning. (Ч.Энхбаатар, Үндсэн хуулийн эрх зүй, 2007)

The right to inviolability and freedom is a fundamental concept in legal philosophy that theoretically belongs to the concept of inalienable fundamental human rights and belongs to the theory of natural rights. Inviolability is expressed in legal terminology by concepts such as “inviolability”, “immunity”, “privacy”, “inviolability of home”, and “inviolability of individual life”.

H. Victor Conde's Handbook of International Terms on Human Rights defines “Integrity rights” as “the right to the protection of the mental, physical, and moral integrity of a person.” Integrity includes well-being, equality, and security of health. For example, it is explained that: freedom from torture, freedom of worship, freedom of conscience, the right to personal integrity, and the right to have one's own family (Кондэ, 1999).” V. V. Maklakov's Theory of Law and State states that the content of the right to integrity is “the prohibition of scientific and medical experiments without voluntary consent (B.В.Манова, 1996).”

, considers “immunity” as “an “immunity” or “immunity” in domestic law.” (Б.Чимид, Үндсэн хуулийн мэдлэг, 2008)

G. Sovd defined “every person's inviolability and freedom is a personal right inherent in human nature,” (Г.Совд, 1999) while D. Lundeejantsan and Ch. Enkhbaatar's book on Constitutional Law explains freedom and inviolability as “every person has the right to protection by law from interference and attack (Д.Лүндээжанцан, 2000).”

N. Lundendorj, in his scientific commentary on the Constitution of Mongolia, states that “the concept of “inviolability” is derived from the Latin word “i mmuntias” which means “free” and “immune”. “Immunity” is a natural science term, and it refers to the immune system of an organism that protects itself from all kinds of external influences. In other words, any organism has an immune system that protects itself from foreign viruses and bacteria. That is why in natural science, “immunity” is called immunity,” it (Н.Лүндэндорж, Монгол Улсын Үндсэн хууль. Шинжлэх ухааны тайлбар, 2022) is explained.

Ts. Tovuusuren's book Understanding the Constitution (a simplified explanation of the constitution), it is stated that “the right to physical inviolability is guaranteed by the fact that no one can, under any circumstances, coerce a free person to do or refrain from doing any act, force him to reveal his private secrets, make him speak or give a statement, or inflict physical or mental pain or suffering (Ц.Товуусүрэн, 2024).”

Inviolable human rights are a set of several absolute rights that arise from one's innate and natural needs, are not established by the state but are granted, are strengthened and protected by legal norms, and cannot be arbitrarily violated or restricted by any outsider.

The inviolability of a person is “the fundamental content of the right to inviolability, which arises from one's natural nature and is not to have one's rights and freedoms restricted in any way outside the grounds and procedures established by law.” (Г.Агар-Эрдэнэ, Хүний эрхийн товч тайлбар, 2014), and also provides a classification of inviolable rights. These include:

- to be free ;
- the right to physical integrity ;

- inviolability of the home ;
- inviolability of secrets ;
- the right to inviolability of honor ;
- the right to inviolability of property ;
- The inviolability of communication is also included. (Г.Агар-Эрдэнэ, Хүний эрхийн товч тайлбар, 2014)

The right to physical integrity literally includes the human genes, genomes, and genetics, which are the constituent units of the human body. In this sense, the right to physical integrity can be interpreted as the right to genetic integrity of the human being.

The status of the right to inviolability in international treaties and conventions: Article 3 of the Universal Declaration of Human Rights states that “Everyone has the right to inviolability”, and Article 12 states that “everyone has the right to inviolability”. “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference.” (Хүний эрхийн түгээмэл тунхаглал, 1948)

Also, Article 9, paragraph 1, of the International Covenant on Civil and Political Rights states: “Everyone has the right to “Everyone has the right to freedom and security of person.” (Иргэний болон улс төрийн эрхийн тухай олон улсын пакт, 1976), The Preamble to the International Covenant on Economic, Social and Cultural Rights states, “recognize the inherent dignity and the equal and inalienable rights of all persons.” (Эдийн засаг, нийгэм, соёлын эрхийн тухай олон улсын пакт, 1966), Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states, “For the purposes of the present Convention, “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person or a third person for such purposes as obtaining from him or a third person information or a confession, punishing him or a third person for a crime he or she has committed or is suspected of having committed, intimidating or coercing him or her, or coercing him or her in any way, or at the instigation of or with the express or tacit consent of a public official or other person acting in an official capacity.”

Furthermore, Article 32 of the Geneva Conventions relative to the Protection of Civilian Persons in Time of War, which applies in time of war, in all cases of declared war or in any other armed conflict between two or more High Contracting Parties, states: “The High Contracting Parties expressly prohibit any action which would cause bodily harm or kill protected persons within their power. These prohibitions include killing, torture, cruel, inhuman or degrading treatment or punishment, and the carrying out of unnecessary medical or scientific experiments on protected persons, as well as all forms of violence, whether committed by civilians or by armed forces. (Дайны үед энгийн иргэдийг хамгаалах тухай женевийн (iv) конвенц, 1950)”

However, international agreements aimed at protecting the rights of specific groups are reflected in the Convention as follows:

- Article 16, paragraph 1, of the Convention on the Rights of the Child states that “ (Хүүхдийн эрхийн тухай конвенц, 1989)No child shall be subjected to unlawful

or arbitrary interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation. ”

- Article 5 (b) of the International Convention on the Elimination of All Forms of Racial Discrimination states: “ ... the right to security of person ; ” (Арьс үндсээр алагчилах үзлийн бүх хэлбэрийг устгах тухай олон улсын конвенц , 1969)
- The preamble to the Convention on the Elimination of All Forms of Discrimination against Women states that “. all human beings are born free and equal in dignity and rights and are entitled to all the rights and freedoms set forth in this Declaration, without discrimination of any kind, in particular on the basis of sex ” (Эмэгтэйчүүдийг алагчилах бүх хэлбэрийг устгах тухай конвенц, 1979);
- The preamble to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states, (Эрүүдэн шүүх болон бусад хэлбэрээр хэрцгий, 1984)“ Bearing in mind article 7 of the International Covenant on Civil and Political Rights.”

Accordingly, the right to be inviolable and free is a fundamental human right, and it is the foundation for other rights, beyond the mere content of being free from the influence of others.

Regarding the right to inviolability in Mongolia. Article 16, Section 13 of the Constitution of Mongolia states that “everyone has the right to inviolability and freedom. It is prohibited to arbitrarily search, arrest, detain, prosecute, or restrict the freedom of anyone outside the grounds and procedures specified in law. No one may be subjected to torture, inhuman or cruel treatment, or humiliation of dignity. The reason and grounds for the arrest shall be notified to the arrested person, his family, and his lawyers within the time specified by law. The privacy of citizens, family, correspondence, and home shall be protected by law.”

This is a person's:

- human body;
- honor;
- personal and family secrets;
- correspondence;
- Since the protection of the inviolability of the home from arbitrary interference by officials and other individuals is guaranteed by the Constitution, no one has the right to infringe on these freedoms outside the grounds and procedures specified in the law. (Г.Совд Н. , 2000)

Mongolian legal scholars define the rights that constitute the “right to inviolability and freedom of the individual” as follows:

- oh my free to be (free) to be inviolable right but is called);
- yes, body inviolable rights;
- oh my of the house inviolable status;
- n 's back inviolable rights;
- man state inviolable status;
- patient inviolable situation said 6 frame all that seen There is. (Ханнс-Зайделийн сан, 2009)

Accordingly, the right to inviolability is related to objects that fall under the regulatory provisions of several branches of law. For example, it is related to Administrative Law, Criminal Law, Civil Law, Tort Law, Family Law, etc.

This study examines the concept of physical integrity. This right is a broad concept and is distinct from the right to life. It can be simply understood as the right to ensure the integrity of one's genes, to be free from external influences, and to be free from the influence of other factors on one's genes.

Regarding Human Genetics: Modern genetics stems from the work (F, 1991) of Gregor Mendel, who lived in the mid-1800s. Genetics is the science that studies the form and heredity of living organisms. (Hartl D, 2005) In other words, the science that studies the laws of how the characteristics of any living organism are passed down from parent to offspring is called "genetics" and is the science of human genetics. (Ж.Барсуурь, 2010) One of the subjects of this science is that the gene (ancient Greek : γένος - Mother) is understood as the unit of genetic information of a living organism. The sum of all genes of an organism is called the genome.

Human genes can be understood as the unit that creates a person. In fact, inside the cells that make up the human body, there is a body called a chromosome. Inside this body, genes are located, and genes are preserved from generation to generation. (Ж.Раднаабазар, 2008) This science is developing very rapidly under the name of genetic engineering. Genetic engineering literally means surgery at the molecular and cellular levels (И.Пүрэвдорж, 2019). This genetic development that distinguishes a person from other living organisms and also shows his unique identity from other people has created a real need for legal science to study and regulate. At the same time, international treaties, conventions, regional conventions, and declarations have been issued, and countries are joining and ratifying them. Furthermore, domestic laws are being introduced to regulate human genetics and independent laws are being enacted.

The coverage of human genetics in international treaties and conventions

Article 1 of the International Declaration on the Rights of the Child, which states (a) "The purpose of this Declaration is to ensure respect for human dignity and the protection of human rights and fundamental freedoms in the collection, processing, use and preservation of human genetic data, human proteomic data and biological samples derived from them", and Article (b) "Any collection, processing, use and preservation of human genetic data, human proteomic data and biological samples shall be in accordance with international human rights law." (International Declaration on Human Genetic Data, 2003) It regulates relations related to human genetic research, analysis and diagnosis.

Bioethics law and human rights popular Article 2 (c) of the Declaration states that "respect for human dignity and human rights, including respect for life and fundamental freedoms, in accordance with international human rights law" and (g) "protect the interests of present and future generations", and Article 3(1) of the Declaration states that "full respect for human dignity, fundamental rights and freedoms shall be guaranteed" (Universal Declaration on Bioethics and Human Rights, 2005).

The Universal Declaration on the Human Genome and Human Rights emphasizes that "recognition of the genetic diversity of the human race should not give rise to any

interpretation of a social or political nature that could infringe on the inherent dignity of all human beings," (The human genome and the Universal Declaration of Human Rights, 1997) and Article 2 (a) of the Declaration states that "everyone shall have the dignity and rights of a human being, regardless of their genetic characteristics." Article 10 of the Declaration on Bioethics and Human Rights states that "...the interests and well-being of the individual shall prevail over scientific and public interests."

Regionally, (Convention pour la protection des Droits de l'Homme et de la dignité de l'être humain à l'égard des applications de la biologie et de la médecine: Convention sur les Droits de l'Homme et la biomédecine, 1997) it is reflected in the Oviedo Convention, the European Union Charter of Human Rights (Charter of fundamental rights of the European Union, 2000), and the African Charter on Human and Peoples' Rights. (African Charter on Human and Peoples' Rights, 1986) Human dignity is inviolable, and genetic engineering or genetic modification must be treated with respect, both at the research and clinical diagnostic and application levels. Discrimination and stigmatization based on genetic characteristics and qualities must be prohibited, genetic uniqueness and diversity must be respected, and the interests of the individual must prevail over other interests and scientific achievements.

To Bodily Integrity (Inviolability)

The right to privacy is a broad concept and is distinct from the right to life. It can be simply understood as the right to ensure that the individual's privacy is protected from outside interference and to be free from interference with their privacy. The European Convention on Human Rights prohibits serious and minor forms of interference with the physical and mental integrity of a person, as well as any medical treatment without consent. The right to privacy is defined as a direct restriction on the freedom to conduct scientific research.

The protection of embryos from genetic engineering and other illegal research, and the absolute prohibition of genetic modification in any offspring, demonstrate that the right to bodily integrity applies to embryos and even to future generations.

2. Comparative Study of the Legal Regulation of Human Genetic / With the Right to no Harm

First of all, let us briefly mention how the issue of human genetics is related to legal science

Regarding the function of the general theory of law, French scholar Jean-Louis Bergel said: "The general nature of legal theory is expressed in two contents. Legal theory, first, gives importance to the scope and limits of legal norms, their structure, and the methods and approaches of legal thinking. Second, although legal phenomena are considered within the framework of a specific country or a specific subject, they are not limited to one branch of law or one system, but are considered in general as a whole and comprehensive system (Бержель, 2000)." Accordingly, from the perspective of legal theory, it is necessary to establish the scope of application of laws and regulations for the regulation of human genetics.

The auxiliary or special sciences of the criminal law include: criminology (the study of the causes and conditions of criminal cases), victimology (victim studies), forensic science, forensic medicine, forensic psychology, etc. In addition to the criminal law, the auxiliary sciences play a role in helping to solve criminal law problems based on the

findings and methods of natural, technical and other sciences. (Ч.Нямсүрэн, Эрх зүйн ерөнхий онол, 2017)
In this sense, it is necessary to regulate social relations related to human genetics by legal norms and determine their scope. Also, human genes are literally a constituent of a person's

own body and should be protected by the right to inviolability associated with them. In order to ensure the right to inviolability, it is a priority to include the legal regulation of human genetics in legislation.

Table 1: The right to immunity is reflected in the constitutions of foreign countries.

	Country	Articles, sections, and provisions of the Constitution	Description
1	Federal Republic of Germany	Article 1, Section 1 of the Constitution states: "Human dignity is inviolable. It is the duty of all state authorities to respect and protect it," and Article 2, Section 2 states: "The German people value the inviolable and inalienable rights of the human person as the foundation of the human community and of peace and justice in the world." Article 2, Section 2 states: "Everyone has the right to life and the human person is inviolable. Personal freedom is inviolable."	On May 8, 1949, the Parliamentary Council (Deutschland, 1949) adopted the Basic Law of the Federal Republic of Germany.
2	French Republic	Article 1, paragraph 2, of the Universal Declaration of Human Rights states: "The purpose of all political associations is the protection of the inherent and inalienable rights of man."	The French Constitution (française, 1958) was adopted on October 4, 1958, and 24 amendments have been made
3	Spain (country)	Article 10, Section 1 of the Constitution states that "Human dignity. the right to inviolability. is the basis of state activity," and Article 18, Section 4, states that "The dignity, personal and family privacy of citizens shall be guaranteed."	Spain (Española., 1978) adopted its Constitution on 1978.12.06.
4	Republic of Italy	Article 9 of the Constitution states that ".Personal freedom is inviolable," and Article 32 states that "No one shall be compelled to undergo specific health treatment except in cases prescribed by law."	Italy adopted its Constitution on December 22, 1947. (italiana, 1947)
5	Republic of Estonia	Section 17 of Chapter 2 of the Constitution states, "Human dignity and reputation shall not be defamed." and Section 18 of the law states that ".no one shall be subjected to medical or scientific experiments against his will," and Section 26 states that "Everyone has the right to inviolability of his family and private life."	adopted the Constitution of the State on 29 June 1992. (põhiseadus, 1992)
6	Russian Federation	Article 21, paragraph 2 of the Constitution states that "No one shall be subjected to medical, scientific or other experiments without his or her consent", Article 22, paragraph 1 states that "Everyone has the right to liberty and security of person", and Article 23, paragraph 1 states that "Everyone has the right to privacy, personal and family secrets, honor and reputation".	The Constitution of the Russian Federation consists of 9 chapters and 141 articles.
7	Republic of China	Article 38 of the Constitution states that "The personal dignity of citizens of the People's Republic of China is inviolable. It is prohibited to use any means to insult, slander, or falsely slander citizens."	The Constitution of the People's Republic of China has 4 chapters and 138 articles. (中华人民共和国宪法, 2018)
8	Japan	Article 11 of the Constitution states that "The people shall not be prevented from exercising their fundamental rights," and Article 25 of the law states that "All citizens have the right to a healthy. life."	Constitution of Japan (日本国憲法, 1945)- i a It was ratified on November 3, 1946, and has not been amended once.
9	Republic of Korea	Article 8 of the Constitution states that "Every citizen has the right to the name of the person, the state. the state shall ensure the fundamental rights of the citizen", Article 10, paragraph 1, states that "Every person has the right to physical freedom", and Article 36, paragraph 3, states that "Every citizen shall have the right to health protection by the state".	The Constitution of South Korea was adopted on July 17, 1948, and revised in 1987. (대한민국헌법, 1988) and consists of a preamble, 130 articles, and other appendices.
10	United States	states that "the citizens of each State shall enjoy all the privileges and immunities equal to the citizens of the other States."	by the Constitutional Convention on September 17, 1787, and was subsequently ratified by all thirteen American states at that time.
11	People's Democratic Republic of Algeria	Chapter Four of the Constitution states that "The State shall guarantee the inviolability of the person" and Article 39 states that "The private life and dignity of citizens shall be inviolable and protected by law."	Algeria adopted its constitution in 1989 (Constitution of the People's Democratic Republic of Algeria, 1989), with amendments and revisions in 1996.
12	Kingdom of Bhutan	states that "Everyone has the right to life, liberty, and security of person."	Bhutan adopted its Constitution (The Constitution of Kingdom of Bhutan, 2008) on 18 July 2008.
13	Plurinational State of Bolivia	Article 1 of Chapter 2 of the Constitution states that "Everyone has the right to life and to physical and psychological integrity."	Bolivia (Bolivia (Plurinational State of)'s Constitution of 2009, 2009) adopted its constitution in a referendum on 2009.01.25 and ratified it on 2009.02.07.

The Constitutions of the above countries directly and implicitly provide for the right to immunity. The fact that immunity is guaranteed in the constitutions of these countries has created the possibility of its implementation through the laws of the respective countries. However, in order to fully ensure the right to immunity as stipulated in the Constitutions, there is a need to adopt legal regulations on human genetics

The laws of foreign countries regarding human genetic testing and diagnosis are regulated as follows

Federal Republic of Germany

In 2009, the Federal Parliament of Germany passed the Human Genetic Testing Act, which covers the areas of medical diagnosis and genetic testing, as well as insurance and employment. It aims to define the requirements for genetic testing, to prevent discrimination on the basis of genetic characteristics. The state's duty to "protect human dignity and to provide adequate information for the individual's right to self-determination" is stated in the original text.

In Germany, diagnostic genetic testing can be performed by any doctor with the written and informed consent of the index person. However, predictive genetic testing and genetic counseling must be performed by medical professionals specializing in human genetics or by specially trained doctors. According to Section 3, "genetic testing" is defined as any examination or risk assessment measure aimed at genetic testing. (Gesetz über genetische Untersuchungen bei Menschen (Gendiagnostikgesetz -GenDG), 2009)

Genetic analysis of biological samples is only permitted by the responsible physician or a "person or organization designated by the responsible physician" during the genetic analysis process. (Pascal Borry, Legislation on direct-to-consumer genetic testing in seven European countries, 2012) Biological samples taken for genetic testing may only be used for the original purpose and must be destroyed immediately afterwards.

the diagnosis and the results of the test are determined, genetic counseling is required for the person who has undergone the test, which is a legal requirement. For predictive and prenatal genetic tests, genetic counseling is required before and after the test. The results of the relevant test should only be communicated to the patient directly by the responsible physician or genetic counselor. If there is a person or organization authorized to perform the test, the results may only be communicated to the person who ordered it. The genetic test and the test results must be stored and destroyed by the responsible medical officer after 10 years (Menschen, Gesetz über genetische Untersuchungen bei, 2010).

Swiss Confederation: The 2004 Federal Act on Human Genetic Testing provides the legal basis for genetic testing in Switzerland. The German Act on Human Genetic Testing is very similar in terms of its purpose and scope to this law. It aims to protect the dignity and identity of the person, to ensure quality assurance, to avoid the misuse of genetic data and to prevent genetic testing. This legal statement contains basic guidelines for genetic testing for medical diagnosis, for determining ancestry, as well as for insurance and employment purposes (Menschen ü. g., 2007).

Swiss doctor with legal authorization. However, only a geneticist or a specially trained medical doctor is allowed to

conduct predictive testing. Also, in Switzerland, genetic samples are used only for their original purpose and then destroyed.

In contrast to Germany, the test results must be communicated to the index person through genetic counseling. For predictive and prenatal genetic testing, genetic counseling is required before and after the test.

The revised version of the law is being developed and regulations are being made regarding direct genetic testing within the framework of this. For example, doctors and pharmacists will be involved in genetic testing of characteristics such as physical fitness and ethnicity. In the future, non-genetic genetics (for example, cancer characteristics) should also be included.

Republic of France: In France, the civil law is defined by the Civil Code, which includes a special chapter on "The right to inviolability of the human body" and "The examination of the genetic characteristics of a person and the identification of a person by his genetic fingerprint" (Code civil, 1994)(articles 16-10 to 16-12). According to the French Public Health Code, the purpose of the examination must be to diagnose a genetic disease and to identify one or more genetic characteristics that may cause a developing disease. However, Genetic testing for the purpose of "obtaining information" is prohibited (Pascal Borry, 2012).

2011 revised French Bioethics Code prohibits genetic testing outside the context of the Public Health Code, and imposes the corresponding penalties of one year in prison and a fine of 15,000 euros in French criminal code.

permitted for medical and scientific research purposes. Only senior doctors can order genetic testing, and they are required to obtain written consent from the index person to provide the information. However, asymptomatic or predictive testing can only be ordered by multidisciplinary teams that are declared and recognized by French health authorities. These teams include a geneticist or pathologist, a genetic counselor, and a psychologist.

Genomic DNA is stored for at least 10 years after genetic testing, and there is no specific regulation regarding the length of time. However, the person who submitted the test has the right to request that the sample be destroyed at any time.

In France, genetic counseling is mandatory for all types of genetic testing and must be carried out by the ordering physician or a genetic counselor working with the physician before the test is performed. The ordering physician is ultimately responsible for receiving the results and informing the patient about them during the consultation. All documents containing genetic information are usually kept in the patient's file in the laboratory or clinic and are the responsibility of the responsible biologist or physician. Finally, genetic information is kept for at least ten years and, in principle, it is allowed to indicate the genetic diagnosis in an official control report (Franziska Rössler, 2017).

Kingdom of the Netherlands: Professional medical standards and patient rights in the Netherlands are set out in the Dutch Civil Code. (Dutch Civil Code, 1992)The Dutch Medical Contract Regulation, which is part of the Civil Code, determines the legal status of patients. and applies to all contractual relationships related to health care.

In the Netherlands, diagnostic and predictive genetic testing can be ordered by any doctor. Before starting any medical

diagnosis, healthcare providers must provide you with full information about the proposed treatment, alternatives, prognosis, risks and possible side effects, in accordance with the Medical Treatment Contract Act.

genetic tests for the detection of risk factors for cancer, as well as risk factors for incurable and preventable diseases, are offered and performed directly to consumers without the consent of the individual concerned. If they are considered to be unscientific and do not comply with the standards of professional medical practice, The Minister shall annul the examination. (PJ, 2000)

In the Netherlands, genetic samples obtained as part of genetic testing are stored indefinitely. While this regulation applies to genetic data, in clinical practice genetic data is stored for three generations of a family.

Dutch law does not regulate genetic counseling for diagnostic and predictive tests. The Medical Contracts Act contains general regulations on patient confidentiality, but does not specifically address the use of genetic information. There are no specific regulations, and doctors can use genetic test results without the patient's consent.

United Kingdom of Great Britain and Northern Ireland:

The UK's constitution is not contained in a written document, but is derived from the common law, which has existed for centuries as a result of legislation passed by Parliament and decisions of the courts. (The justice system and the constitution, 2024) However, there are currently no laws directly related to genetic testing. Most of the laws that do touch on the subject are designed to protect consumer rights, medical devices, advertising or data protection in general. In 2010, the Human Genetics Commission, which advised the government on new developments in human genetics, set out some guidelines for a common framework of principles "to protect consumers and their families" and developed a voluntary accreditation scheme for laboratory testing. However, the UK government has abolished the Human Genetics Commission as part of its budget cuts and reforms (Commission, UK Budget Cuts Whack Genetics, 2010).

In clinical practice in the United Kingdom, only consultant physicians perform genetic testing. There is no formal distinction between diagnostic and predictive testing, but physicians are generally able to order predictive testing through clinical genetics services.

In 2004, the UK Human Tissue Act was passed, which deals with the use of biological samples. Under this Act, it is a criminal offence to carry out genetic analysis on any human tissue without the lawful consent of the donor (Human Tissue Act, 2004). Genetic samples are stored for a period mutually agreed upon between the doctor and the patient, and there are no specific regulations for genetic counseling. If counseling is provided, it is not mandatory to be a geneticist.

Republic of Portugal: Portugal has signed and ratified the European Convention on Human Rights and Biomedicine without reservation, and the Convention is, in accordance with the Portuguese Constitution, national laws have "superior force" over national laws. National laws on personal genetic data specifically regulate health data for genetic diagnosis. At the same time, in addition to the principle of non-discrimination against people with genetic diseases or certain genetic inheritance, It includes regulations for employers to obtain human genetic information.

By law, diagnostic genetic testing must follow "the general

principles that apply to all health services." Predictive genetic testing can only be ordered by a medical geneticist, based on written and informed consent. Pre-testing is recommended for conditions that are unlikely to be curable, are not curable, or are in an advanced stage. should provide a (Patients' Rights in the European Union, 2008) logical and general conclusion.

Before taking a genetic sample, the legal consent of the indexer must be documented, including the purpose of collection and the period of storage. Portugal has clearly assigned the government the responsibility to regulate the offer and performance of genetic tests, refusing to perform genetic tests in national and foreign laboratories without the support of a medical team composed of relevant specialists. On this basis, the government regulates the relations related to the accreditation, certification and licensing of all Portuguese laboratories that perform genetic tests (Personal genetic information and health information law, 2005).

The above law states that any results of genetic testing shall be disclosed only to the person referred for medical advice. Medical records shall be available from the physician responsible for the patient's treatment, and the transfer of health information to others shall be permitted only with the patient's written consent. Health and genetic information shall be stored in a classified manner and shall be protected by confidentiality.

United States. Each state in the United States has its own specific regulations regarding genetic testing. Although diagnostic tests can be ordered by any physician, the legal framework varies. There is no federal law prohibiting private companies from performing DNA testing on biological samples, so genetic testing is conducted covertly. The prohibitions and restrictions on informal genetic testing vary from state to state, and the state in which you live may determine where the samples are analyzed and the results obtained, as well as how (Strand, 2016) the state interprets the law.

In the United States, DNA samples are only stored for a fee. If payment is not made, the genetic samples are destroyed immediately after processing. The Health Insurance Portability and Accountability Act of 1996 seeks to protect patient privacy by limiting the sharing of medical information and defining it as "protected health information." In 2013, the U.S. Congress amended the Privacy Rule in 2013 to "restrict health insurers and employers' access to individual genetic information and to prohibit genetic discrimination," in accordance with the Genetic Information Nondiscrimination Act of 2008 (Feldman, 2012).

The Freedom of Information Act of 1966 was the first U.S. law to grant citizens access to federal records upon request. The law does not specifically address the genomic information of participants in federal databases. The National Human Genome Research Institute maintains several databases containing genomic information and has established a special information sharing policy that allows researchers to access their research data only upon request.

In 2013, the U.S. Supreme Court ruled that law enforcement agencies can collect DNA samples from all suspects arrested for a crime, ruling that "when officers arrest a suspect on suspicion of a serious crime and bring him or her into custody, the collection and testing of a cheek swab for DNA from a detained or arrested person is a lawful procedure for the police, just as fingerprinting or photographing is (Maryland v. King, 569 U.S. 435 (2013), 2013)."

People's Republic of China: As of 2017, China had registered and used about 68 million samples in its national DNA database, which accounts for about 4.912% of the total population (1 billion 384.35 billion people). The National Genetic Database has played a significant role in combating human trafficking in China. Since April 2009, more than 39,000 cases of human trafficking have been solved through DNA analysis.

In addition, DNA samples from the parents of 1,400 missing, homeless, and abandoned children have been matched with DNA tests, and the children have been returned to their parents. The establishment of the national genetic database has significantly reduced the number of child trafficking cases in China, said Chen Shikou, director of the Anti-Human Trafficking Department of the Ministry of Social Security (И.О, 2010).

The State Council of the People's Republic of China also promulgated the "Regulations on the Management of Human Genetic Resources of the People's Republic of China" by Order No. 717 dated March 20, 2019. (中华人民共和国人类遗传资源管理条例, 2019) Article 7 of the Regulation states that "Foreign organizations, individuals, and organizations established or effectively controlled by them are prohibited from collecting and preserving our country's human genetic resources in our territory." It also provides regulations to protect the inviolability of our citizens. Article 9 of the Regulation states that "The collection, preservation, use, and external provision of our country's human genetic resources must comply with ethical principles and be subject to ethical supervision in accordance with relevant national regulations. When collecting, preserving, using, and transferring our country's human genetic resources to the outside world, the privacy rights of the providers of human genetic resources must be respected, prior consent must be obtained, and the legitimate rights and interests of the providers of human genetic resources must be protected." It also guarantees the inviolability of human genetic resources.

Russian Federation: Russia first adopted the law on the "DNA database" in 2009, and currently has DNA data from about 300,000 samples, covering about 0.2% of the total population (147 million people) (Ганболд.С, 2018).

In Russia, DNA identification tests were first used in court in the mid-1980s, and the development of a DNA database registration system was completed in the mid-1990s, but due to financial difficulties, their implementation was delayed. (О государственной геномной регистрации в Российской Федерации, 2008) On December 9, 2008, the State Duma adopted the Law "On the Federal State Genomic Registry", which came into force on January 1, 2009. Article 3, Part 1 of this law states that "the State Genomic Registry shall be carried out in accordance with the generally recognized rights and freedoms of man and citizen, in accordance with the principles of legality, humanity, confidentiality, voluntariness and duty", and Article 2 states that "the State Genomic Registry shall not endanger the life and health of a person, nor shall it discredit his name, statehood or reputation", protecting the right to genetic inviolability.

The regulations in the laws of the above countries, first, require the consent of the person to ensure the genetic integrity of the person. Second, they prevent the violation of the right to genetic integrity of the person by prohibiting medical and scientific experiments.

3. Methods of Protecting the Constitutional Right to be Free from Injury Through the Legal Regulation of Human Genetic

The right to inviolability, or the right to genetic inviolability, is reflected in Mongolian legislation as follows. In Mongolia, Article 16, Section 13 of the Constitution states that "the right to be inviolable and free..." (Монгол Улсын Үндсэн хууль, 1992) According to this, the "right to inviolability and freedom" stipulated in the Constitution of Mongolia is considered in terms of content in six areas: the right to freedom, the right to inviolability of the person, the right to inviolability of housing, the right to inviolability of privacy, the right to inviolability of honor, and the right to inviolability of property.

This right is also stated in Article 16, Section 13 of the Constitution, which states that "The privacy of citizens, their family, correspondence, and home shall be protected by law;" and provides for the protection of this right by law. Therefore, the requirement for legal protection of this right is not a declaration, but is directly stated in the Constitution.

Article Nineteen, Section 1 of the Mongolian Constitution states that "The state shall be responsible to its citizens for creating economic, social, legal and other guarantees that ensure human rights and freedoms, combating violations of human rights and freedoms, and restoring violated rights." The state is responsible for ensuring the protection of human rights.

In this sense, the right to genetic integrity of a person must be protected by law, and the state must fulfill its duties as enshrined in the constitution.

Mongolia first adopted the Donor Law in 2000. The law regulates "the collection, analysis, processing, storage, transportation, use, export, and import of organs for medical purposes." However, the regulation does not cover gene cloning, but only regulates the transplantation of tissues and organs containing genetic information into humans. However, (Донорын тухай хууль, 2018) a revised version of the law was approved in 2018 and includes regulations on stem cells and tissues. Article 4 of the law also sets out the principles to be followed in donor activities and addresses the protection of sensitive human information, including blood, blood products, and tissues.

In 1995, the Law on Personal Privacy was passed, but it was very general, and in 2021, the Law on the Protection of Personal Information (Хүний хувийн мэдээлэл хамгаалах тухай хууль, 2021) was passed, which established regulations for the protection of sensitive personal information. The regulation states that "authorized bodies specified in the law shall use genetic and biometric information for the purpose of combating, preventing and investigating crimes and violations;" The Minister of Electronic Development and Communications, in accordance with the annex to the Order No. А/90 dated September 11, 2023, "Sensitive Personal Information, Genetic and Biometric Information" Technological safety requirements and procedures to be followed in the processing of (Хүний эмзэг мэдээлэл, генетик болон биометрик мэдээлэл боловсруулахад баримтлах технологийн аюулгүй байдлын шаардлага, журам, 2023) approved.

The regulation regulates relations for the purpose of combating, preventing and investigating crimes and violations. However, Article 22, Section 22.3 of the Law on (Шүүх шинжилгээний тухай хууль, 2022) Forensic Analysis states that "The unified database of analysis and

data shall consist of the following information:” and Section 22.3.3 of the Law also specifies “genetic information”. The law regulates relations for conducting analysis and diagnosis by authorized state bodies on the grounds specified in the law on the inviolability of human genetic rights without requiring the consent of the person concerned.

In terms of liability regulations, the Criminal Code, as amended in (Зөрчлийн тухай хууль, 2017)2020 and 2021, provides for liability for violators of the Personal Data Protection Law and the Donor Law. Article 15.3 of the Criminal Code. Illegal collection of human blood (Эрүүгийн хууль, 2015), tissues and organs, and Article 15.4 of the Law. Preparation and transplantation of human blood, tissues and organs under unqualified conditions. The above regulations directly prohibit genetic testing and research. Also, the Law on Consent (Зөвшөөрлийн тухай хууль, 2022) does not include a list of activities that can be carried out with permission.

In conclusion, Mongolia has regulations on the protection of human genetic information, but there are no regulations on other forms of attacks. Also, although the legislation on the health sector includes general regulations on (external and internal) testing and diagnosis, there are no regulations on human genetic testing and diagnosis. In this sense, there are conditions for violating the right to genetic inviolability of a person, and there is no specific subject for monitoring. There is also a lack of a legal framework to regulate relations in this regard.

Conclusion / Suggestions

International treaties and conventions have included provisions to ensure the integrity of human genetics. Mongolia has joined these international treaties and conventions and is committed to implementing them. International and regional treaties and conventions have also been adopted to regulate human genetic analysis, diagnosis, and editing. At the same time, some countries have taken measures to ensure the integrity of human genetics, such as enacting independent laws, rules, and regulations on human genetics and amending and supplementing relevant laws.

to establish detailed legal regulations on human genetics in Mongolia, develop and implement state policies on human genetics, and make amendments and additions to the legislation. There is an urgent need to enact a primary law on protecting the health of the population, the security of genetic information, and conducting research, analysis, and diagnosis. This will legally open up opportunities to protect human genetic information and conduct research, analysis, and diagnosis for the health and well-being of people.

In light of the above, the following proposals are made:

1. Correctly define the scope of the right to privacy. Human genes are the constituent units of the human body and belong to the human body. Therefore, from a legal perspective, interfering with or attacking human genes, genomes, and genetics is a violation of the right to privacy.
2. Adopt a preliminary law on human genetics. This will open up human genetic research, analysis, diagnosis, and treatment activities that cannot be covered by the current laws such as the Law on Forensic Science, the Law on Donation, and the Law on the Protection of Personal Data. The law will also provide detailed regulations on human genetics, creating a legal framework for regulating unregulated relations.

3. Amendment to the Law on Consent. Private legal entities and researchers will be allowed to conduct activities related to human genetic research, analysis, and diagnosis. The development of genetic science cannot be attributed solely to the functions of the state, and other private legal entities, researchers, and scientists must be involved. In other countries, research, analysis, and diagnosis activities are carried out based on laboratories at universities. In this case, the storage of information and samples is protected by law.
4. Incorporating relevant laws and regulations, such as the Law on Health and the Law on Medical Care and Services 6 (Ц.Амарсанаа, 2023). Although there are regulations related to health and treatment, they do not address the treatment of human genetic information. In the future, if genetic-level treatment or diagnosis is carried out, it will be necessary to obtain consent from the patient, and to regulate the storage, protection, and destruction of samples.
5. Amendment to the Criminal Code. Criminal liability will be imposed for serious violations of the law related to human genetics (Human Genetics Law) and unauthorized activities. Countries are imposing criminal liability for such acts. In Mongolia, there is no law that regulates this in detail, so it is regulated as a violation of personal privacy and disclosure. However, since personal information has different consequences in terms of importance, it is necessary to legislate it as a specific crime.
6. Amendment to the Law on Offenses. It is necessary to include provisions for liability for violations of the law governing relations related to human genetics (the Law on Human Genetics). This will create conditions for liability for violations other than crimes.
7. Legislate the regulation of human genetics-related relationships in the activities of state administrative organizations. In cases where issues related to human genetics are raised in the activities of state administrative organizations, it is necessary to amend and approve the law regulating them.

In the future, there is a need to specifically regulate human genetics and related activities, such as research, analysis, diagnosis, treatment, storage, data transfer, and destruction, separately from other activities. It can also be concluded from the laws, regulations, international treaties, and conventions of other countries that human genetics needs to be studied not only in the fields of biology and genetics, but also in the field of law.

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