



Diversity & Inclusion: LGBTQ+ Status in Japan



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Japan is considered to be behind when it comes to the adoption of LGBTQ+ policies. In 2020, Japan ranked 34th out of 35 countries in the LGBTQ+ index for OECD countries.¹ Despite this, Japan is now beginning to show signs of change as will be discussed in this article.

A. Transgender Status in Japan

1. Constitutionality of the Gender Identity Disorder Special Cases Act

In Japan, the Gender Identity Disorder Special Cases Act is the only legally binding national law that relates to sexual minorities. This law sets forth five requirements for transgender people to change their gender in the family register system to the gender that conforms to their gender identity.

The requirements are that the person must: (a) be over eighteen (18) years of age, (b) not be married, (c) not have minor children, (d) be permanently sterilized,

and (e) have a physical appearance with genitalia that approximates that of the changed sex. These requirements have been criticized as being too strict for transgender people.

The Supreme Court has ruled that there is no violation of the Constitution concerning the requirement under item (b) in 2020,² item (c) in 2021,³ and item (d) in 2019.⁴ However, in another case concerning the requirement under item (d), the Supreme Court expressly stated in December 2022 that the case will be heard by the Grand Bench of the Supreme Court.⁵ Generally, Supreme Court decisions are rendered by a petty bench of five justices. However, when the Supreme Court rules on a new constitutional matter, all fifteen (15) Supreme Court justices, the Grand Bench of the Supreme Court, must hear the case in court. Thus, it is expected that the Grand Bench of the Supreme Court will make a new constitutional decision on the requirement under item (d).

1. OECD, "Over the Rainbow? The Road to LGBTI Inclusion," OECD iLibrary, 2020, at https://www.oecd-ilibrary.org/sites/8d2fd1a8-en/1/3/3/index.html?itemId=/content/publication/8d2fd1a8-en_csp_08ffc7de174b956fd7b0b0d5b75479ab&itemIGO=oecd&itemContentType=book#figure-d1e9771.

2. Supreme Court, March 11, 2020, Shin Hanreikaisetsu Watch, Kempo No. 215 at http://lex.lawlibrary.jp/commentary/pdf/z18817009-00-012152298_tkc.pdf.

3. Y. Shibamura, "Japan top court rules gender alteration ban for parent of underage child constitutional," The Mainichi, December 3, 2021, at <https://mainichi.jp/english/articles/20211203/p2a/00m/0na/035000c>.

4. K. Doi, K. Knight, "A Silver Lining in Japan's Supreme Court Transgender Ruling," Human Rights Watch, March 1, 2019, at <https://www.hrw.org/news/2019/03/01/silver-lining-japans-supreme-court-transgender-ruling>.

5. The Yomiuri Shimbun, "Supreme Court to decide on constitutionality of gender reassignment surgery requirement," December 9, 2022, at <https://japannews.yomiuri.co.jp/society/crime-courts/20221209-75776/>.



2. Treatment and discrimination of transgenders in the workplace

In the so-called Ministry of Economy, Trade and Industry (“METI”) Transgender Toilet Use Restriction Case, which was a lawsuit filed by a transgender female employee who was restricted from using the women’s restrooms at her workplace, the Tokyo High Court decided that the METI restriction was not illegal.⁶ However, on June 16 of this year, the Supreme Court accepted the appeal on this case and decided to hear arguments in court.⁷ Since a court hearing before the Supreme Court is required to change a conclusion of the High Court, the Supreme Court is expected to issue its first ruling that discrimination against a transgender person is illegal.

B. LGB+ Status in Japan

1. Overview

A significant number of local governments have adopted Partnership Certification Systems⁸ because they want to recognize same-sex couples. However, these certification systems are not legally binding. Notably, the Japanese Prime Minister, Mr. Fumio Kishida, even recently said, “*I don’t think disallowing same-sex couples to marry is an unjust discrimination by the state.*”⁹

Although Japan has not introduced

anti-discrimination laws to protect LGBTQ+, LGBTQ+ is becoming an important political issue as evidenced by the dismissal of an aide to the prime minister who made discriminatory remarks.¹⁰ Furthermore, lawsuits on this topic are on the rise as further described below.

2. Status of LGBTQ+ lawsuits in Japan

In Japan, when a person in a male-female marriage has an affair with a third party, the innocent spouse has the right to claim damages against the said third party for breaking the family peace. Although Japan has not adopted a same-sex marriage act, in 2021, the Supreme Court recognized that this same right to claim damages applied to same-sex couples who got married abroad.¹¹

Regarding visas, in 2019, the Ministry of Justice issued a one-year resident visa to a Taiwanese man who lived with a Japanese man for twenty-five (25) years.¹² In 2022, one court granted a “designated activities visa,” which is a long-term resident visa, to an American man who was legally married to a Japanese man in the U.S.¹³

The Tokyo, Osaka and Sapporo High Courts are currently hearing lawsuits claiming that not allowing same-sex marriages is unconstitutional. Related to this, the Sapporo District Court's decision of 2021¹⁴

6. Kyodo News, “Japan court rules toilet use limit for transgender official legal,” May 27, 2021, at <https://english.kyodonews.net/news/2021/05/cb976699595f-japan-court-rules-toilet-use-limit-for-transgender-official-legal.html>.

7. K. Toyama, “Japan’s highest court to rule on transgender use of washrooms,” The Mainichi, April 26, 2023, at <https://mainichi.jp/english/articles/20230426/p2a/00m/0na/012000c>.

8. Marriage for All Japan, “Same-sex partnerships in Japan,” at <https://www.marriageforall.jp/en/marriage-equality/japan/>.

9. M. Yamaguchi, “Japan PM: Ban on same-sex marriage not discrimination,” AP News, March 1, 2023, at <https://apnews.com/article/japan-kishida-lgbtq-samesex-marriage-discrimination-43baf7af74baf0d8b908124b19eabf0e>.

10. Nikkei Asia, “Japan PM Kishida sacks aide over anti-LGBT comments,” February 4, 2023, at <https://asia.nikkei.com/Politics/Japan-PM-Kishida-sacks-aide-over-anti-LGBT-comments>.

11. S. Abe, “Same rights for same-sex couples, says Supreme Court,” The Asahi Shimbun, March 20, 2021, at <https://www.asahi.com/ajw/articles/14286286>.

12. M. Osumi, “Justice Ministry overturns deportation order for gay Taiwanese man without visa,” The Japan Times, March 22, 2019, at <https://www.japantimes.co.jp/news/2019/03/22/national/justice-ministry-overturns-deportation-order-gay-taiwanese-man-without-visa/>.

13. The Asahi Shimbun, “Editorial: Same-sex couples of Japanese and foreigners need equality in Japan,” October 11, 2022, at <https://www.asahi.com/ajw/articles/14739594>.



was encouraging as it was the first district court decision to clearly state that not allowing same-sex marriages violates the Equal Protection Clause of the Constitution, stating that *“the only difference between heterosexual persons and homosexual persons is their sexual orientation, which cannot be chosen or changed by one’s own will. In light of this, there should be no difference in the legal benefits that persons of any sexual orientation can enjoy.”* Recently, the Nagoya District Court similarly ruled that the refusal to recognize same-sex marriages violates the Equal Protection Clause (Article 14(1) of the Constitution), and Article 24(2) of the Constitution, which guarantees the freedom of marriage.¹⁵

On the other hand, an Osaka District Court decision¹⁶ concluded that not allowing same-sex marriages is not a violation of the Constitution, citing the fact that the original purpose of marriage is to bear and raise

children. The court also considered insignificant the disadvantages that homosexuals suffer from not being able to marry. In two other cases, the Tokyo District Court and the Fukuoka District Court ruled that the absence of any legal protections for same-sex marriages is an *“unconstitutional state”*¹⁷ or a *“state of unconstitutionality,”*¹⁸ but these courts did not categorically declare the restriction on same-sex marriages unconstitutional.

C. Conclusion

As shown in the discussion above, Japan is clearly starting to change. Soon, Japanese politicians, judges, practitioners and activists will have to respond to every issue concerning the status of LGBTQ+ in Japan.

Companies that wish to promote diversity and inclusion should continue to monitor the developments in Japan on this front.

14. LGBT & Allies Network, *“March 17, 2021: Sapporo District Court Rules Lack of Marriage Equality Violates Article 14 of the Constitution (English Translation of Court’s Decision),”* March 21, 2021, at <http://llanjapan.org/news/1701>.

15. The Asahi Shimbun, *“Nagoya court: Denial of same-sex marriage is unconstitutional,”* May 30, 2023, at <https://www.asahi.com/ajw/articles/14920465>.

16. LGBT & Allies Network, *“June 20, 2022: Osaka District Court Ruled Lack of Marriage Equality Does Not Violate the Constitution (English Translation of Court’s Decision),”* August 11, 2022 at <http://llanjapan.org/news/topics/1981>.

17. NHK World – Japan, *“Tokyo court upholds same-sex marriage ban but also offers hope for equal rights,”* December 5, 2022, at <https://www3.nhk.or.jp/nhkworld/en/news/backstories/2152/>.

18. E. Lies, *“Japan ruling on same-sex marriage disappoints but ‘a step forward,’”* Reuters, June 8, 2023, at <https://www.reuters.com/world/asia-pacific/japan-court-rules-that-not-allowing-same-sex-marriage-is-state-2023-06-08/>.

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