

日本對LGBTQI+ 的暴力與歧視 所採取的法律措施 進展及挑戰

Progresses and Challenges in Legal Measures Taken against Violence and Discrimination Faced
by LGBTQI+ in Japan

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1 對LGBTQI + 的暴力在日本

Violence against LGBTQI+ in Japan

- 日本相對比較少見對LGBTQI的暴力行為發生

Violent behaviors against the LGBTQI community are relatively less common in Japan

- 著名案例：2000年2月10日 東京新木場“夢之島公園”兇殺案

A prominent case: the “Yumenoshima Park Murder” taking place in Shinkiba, Tokyo, on February 10h, 2000

- 一位男生（33歲）在夢之島（著名男同志相遇的地方）被三個未成年少年毆打頭部等，第二天被發現死在公園裡。少年們在警方詢問中說道“為了搶奪金錢而施暴，以為HOMO不會主動報警”。

A male (33) was beaten by three teenagers at Ymenoshima Park (a famous meeting place for gay men), and found dead the next day. When interrogated by the police, the three teenagers claimed that they “assaulted the man to rob money and thought, as a homosexual, he wouldn’t go to the police.”



黑暗污名中的同志 無處可告

LGBTQI+ in the dark have nowhere to go

- 在日本Gay Bashing，對跨性別女性的暴力行為並不是個案。

In Japan, gay bashing and violent behaviors against transgender females are not rare.

- 不少被害人不敢報警，也不願意提到檯面上抗議救助。很多案件在黑暗裡忍耐，假裝沒任何事情發生。怕曝光自己的同志身分。

Many victims do not dare to go to the police, nor are they willing to openly protest or seek help. Many victims endure the violence in the dark and pretend nothing happens as they are afraid of exposing their LGBTQI+ identity.

- 對同志提供友善諮詢及協助的機構還不太普遍，難於利用政府部門的社會福利機構。

Organizations that provide friendly consultation and assistance for the LGBTQI community are not very common yet, and it is difficult to make use of the governmental social welfare agencies.

- 對同志族群的污名化程度嚴重的社會，對同志的暴力等侵害行為很難浮上檯面，難於成為社會公共議題。

In a society with a severe level of stigmatization against the LGBTQI community, harms and violence against LGBTQI+ are difficult to be brought to light and to become a public agenda.

2 法制的不可視化模式

Invisibility in the legal system

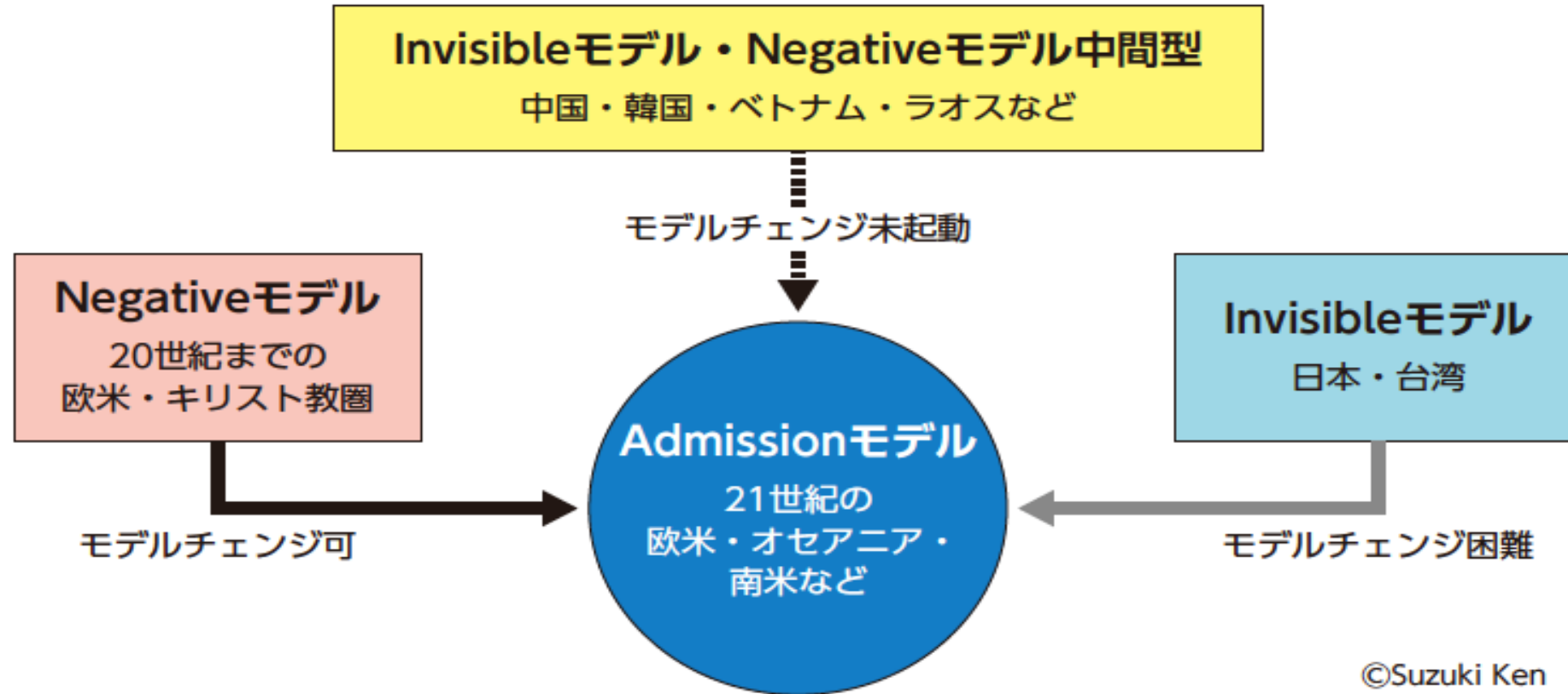


図 LGBT法制化のモデル論

看不見的LGBTQI +

The invisible LGBTQI+

- 只存在於私密空間，躲在私人空間

They only exist in concealed and private spaces.

- 公共空間裡見不到LGBTQI +，似乎不存在一樣

LGBTQI+ are not to be seen in public spaces, almost like they don't exist.

- 政治，法律領域裡沒有任何主體性與客體性

No agency and objectivity in political and legal fields.

- 難於啟動形成保障LGBTQI + 的法制

It is difficult to introduce legal regulations that protect LGBTQI+.

- 看不見不等於“友善”或寬容

Not seeing does not mean being “friendly” or tolerant

3 性別認同障礙特例法

The special law on gender identity disorder

- 日本唯一正面規定 (LGB) T (QI) 的法律 2003年

Enacted in 2003, it is the only legal statute in Japan that positively regulates (LGB)T(QI).

- 更改性別登記的要件

Requirements for altering gender registration:

- ①未婚 (以徹底防止同性婚姻為目的)

Single (in order to prevent same-sex marriage)

- ②沒有20歲以下的子女、

No children under the age of 20.

- ③缺乏生殖腺或生殖機能永久缺失

Lack of germ gland or permanent loss of reproductive function

- ④性徵和性器官外觀近似於另一個性別

Sexual characteristics and appearance of sexual organs are closely similar to another sex

→法律強迫接受手術，剝奪身體自由

The law stipulates that gender replacement surgery is obligatory, which deprives the bodily freedom of individuals

最高裁判所 2019年1月23日決定

The Supreme Court ruling on January 23rd, 2019

- 性別認同障礙特例法不違背憲法（13條，14條1項），認可現行法的合憲性

The Special Law on Gender Identity Disorder is constitutional (Article 13, Article 14-1)

- 理由1 若以原來的性別進行生育，引發親子關係相關的問題，這樣會導致社會混亂。

Argument 1: it may cause social disruption if a person gives birth with his/her original sex and creates problems related to parent-children relationship.

- 理由2 由於長期以來依照生物學上的性別區分男女，需要迴避急速變化。

Argument 2: as the biological division between men and women has been established for a long time, any sudden change should be avoided.

4 性別相關政策也適用於同性之間或SOGI

Gender-related policies also apply to same-sex couples or SOGI

- 家庭暴力防治法適用於同性伴侶 對同性伴侶發出家暴保護令（2007年）

The Domestic Violence Prevention Act applies to same-sex couples, allowing one to issue a protection order against his/her same-sex partner (2007).

- 男女雇用機會平等法厚生勞動部指南（2013年）：首次明文規定性騷擾也包含同性之間的。

The Ministry of Health, Labor and Welfare's guideline for the Equal Employment Opportunity Act (2013): it stipulates for the first time that sexual harassment also refers to incidents between two individuals of the same sex.

- 防止霸凌對策推進法文部科學部基本方針（2016年）：明文寫進性傾向及性別認同相關記載。
- Basic guidelines of the Ministry of Education, Culture, Sports, Science and Technology for the Act for the Promotion of Measures to Prevent Bullying: sexual orientation and gender identity are included in the content.
- 當事人憂慮提出訴求等於LGBTQI身分的出櫃

Involved parties worry that bringing charges may force them to come out.

5 艱難的立法 禁止歧視相關法

Difficult legislation: anti-discrimination laws

- 2020年執政黨・在野黨分別草擬LGBTQI權益相關的法案

In 2020, both the ruling and opposition party drafted bills concerning LGBTQI+ rights.

- 自民黨反對制定禁止歧視法（因為到底什麼是歧視定義模糊，恐會促使出現限制行動自由的弊端）。

The Liberal Democratic Party was against passing an anti-discrimination law (because the definition of discrimination is too vague, which may lead to the law being abused to limit individual freedom).

- 經過朝野協商，最終由雙方聯合提出“對LGBTQI理解增進”法案

Through bipartisan negotiation, finally the “Act to Improve Understandings of LGBTQI” was proposed by both parties jointly.

- 遭受自民黨內保守派的極力反對，法案無法提到國會審議。最終法案歸零。

The bill faced strong opposition from the conservative power within LDP and failed to be submitted to the congress for further deliberation. At the end, the bill was dropped.



LGBTQI相關團體聯合召開記者會 發表聲明
LGBTQI+ organizations hosted a joint press conference to issue a statement

6 對同性伴侶的法律保障

Legal protection of same-sex couples

破口：地方政府同性伴侶認可制度

Entry point: local governments recognize the status of same-sex partnership.

策略：地方包圍中央

Strategy: surrounding
the center from all sides



渋谷区・虹色ダイバーシティ 全国パートナーシップ制度共同調査

Shibuya City Office・NPO Nijiirō Diversity Collaborative Study of LGBT Partnership Coverage in Japan

交付件数(2022年3月31日時点)

Number of couples who registered by March 31, 2022

2,832組

導入自治体(2022年4月1日時点)

Number of local governments with LGBT partnership system by April 1, 2022

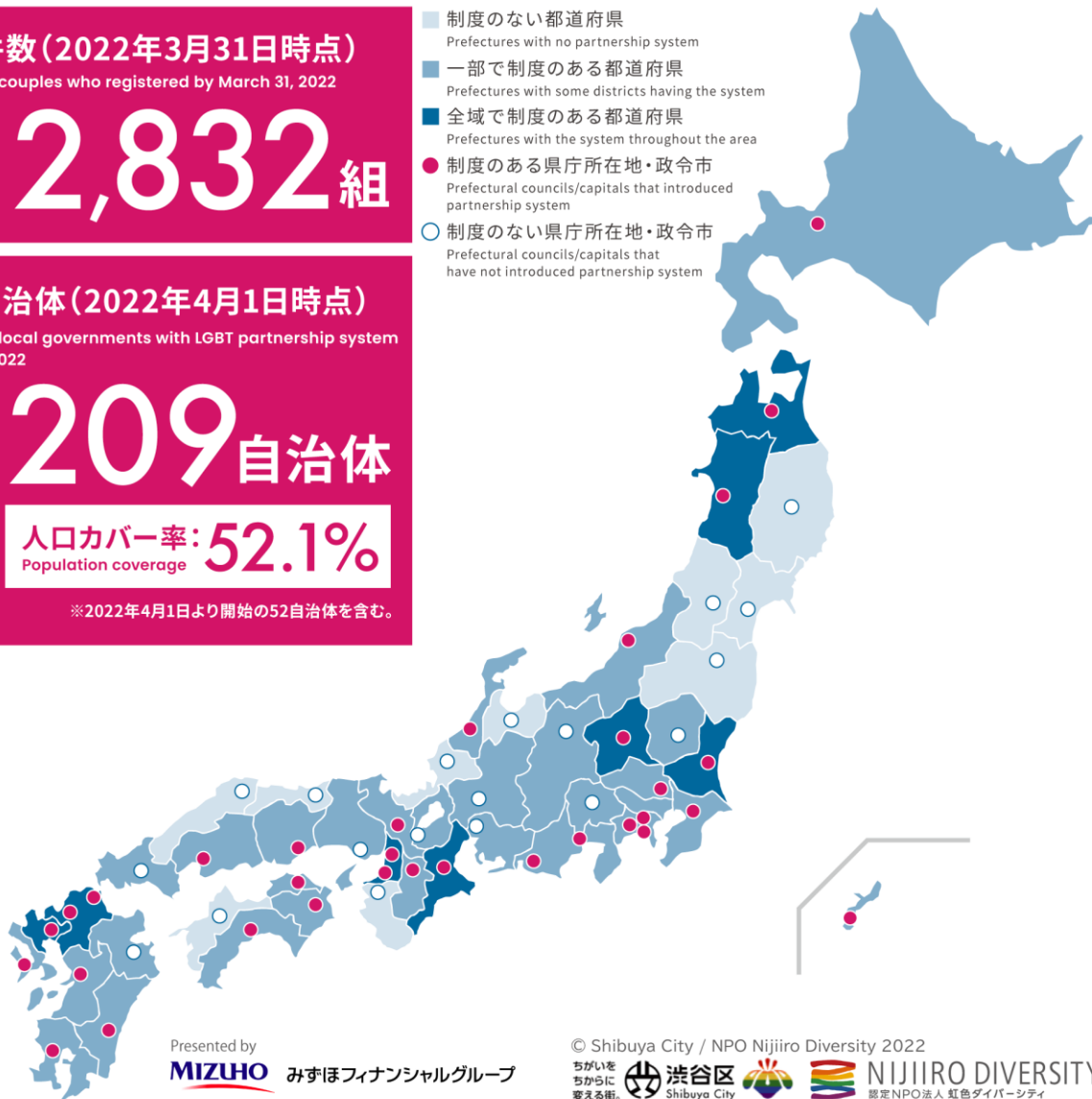
209自治体

人口カバー率: 52.1%

Population coverage

※2022年4月1日より開始の52自治体を含む。

- 制度のない都道府県
Prefectures with no partnership system
- 一部で制度のある都道府県
Prefectures with some districts having the system
- 全域で制度のある都道府県
Prefectures with the system throughout the area
- 制度のある県庁所在地・政令市
Prefectural councils/capitals that introduced partnership system
- 制度のない県庁所在地・政令市
Prefectural councils/capitals that have not introduced partnership system



共有209個地方政府建立同性伴侶認可制度(2022年4月1日)

A total of 209 local governments have established a registration system for same-sex couples (as of April 1st, 2022)

超過全國總人口的52%
共有2832對同性伴侶利用此一制度

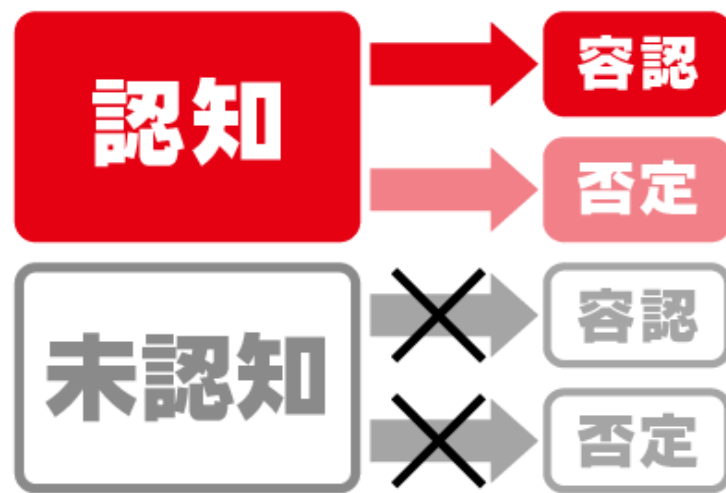
More than 52% of the total population, a total of 2832 same-sex couples have made use of this system.

憲法24条1項が 同性婚を否定していると 解するのは誤り! **未認知 ≠ 否定**



第24条1項 婚姻は、両性の合意のみに基いて成立し、夫婦が同等の権利を有することを基本として、相互の協力により、維持されなければならない。

同性婚の
存在を



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“婚姻僅以兩性合意之下成立”

“A marital union is only valid between two people of opposite sexes.”

憲法（1946）第24條尚未考慮到同性婚姻的存在，該條僅就異性婚姻的規定，對是否承認同性間的婚姻，沒有直接表述。

Having not taken into consideration the existence of same-sex marriage, Article 24 of the Constitution (1946) only refers to heterosexual marriage. However, it does not directly stipulate whether same-sex marriage is acknowledged.

對於未認知的事宜，邏輯上根本無法解釋為邏輯上否定的意思。

Logically speaking failing to be aware of something cannot be treated as denying it.

憲法不可能成為禁止歡迎平權的憲法依據。

The Constitution cannot be the foundation of denying equal treatments.

地方政府同性伴侶認可與婚姻

Recognition of same-sex partnership and marriage by local governments

社会承認
Social
recognition

部分效果、可視化同性伴侶・可期待擴大效果
Partial effects, making same-sex couples visible
The effects can be expected to expand

法律上的
權利義務
Legal rights and
obligations

無
None

“從「不存在」到「存在」”

From “not existing” to “existing”

(東京新聞2019.1.30)

(Tokyo Shimbun, 2019/01/30)



日本婚姻平權訴訟

Marriage equality lawsuits
in Japan

全國同步起訴

Lawsuits all over the country

Fukuoka, 2019/09

福岡
19年9月

Nagoya, 2019/02

名古屋
19年2月

Osaka, 2019/02

大阪
19年2月

Tokyo, 2019/02

東京
19年2月

Sapporo, 2019/02

札幌
19年2月

原告 五地共有14對同性伴侶，66位律師團

Claimants: a total of 14 same-sex couples in 5 cities,
with a legal team of 66 lawyers



婚姻平權訴訟告至五所地方法院

Marriage equality lawsuits at 5 district courts

札幌・東京・名古屋・大阪・福岡

Sapporo, Tokyo, Nagoya, Osaka, Fukuoka



首件判決於2021年3月17日札幌地方法院 違憲判決，第二件判決預計於2022年6月20日大阪地方法院，三、五年後有望最高法院終審判決。



The first ruling was made by the Sapporo district court, with the court finding the prohibition unconstitutional.

The second ruling is scheduled to be made by the Osaka district court on June 20th, 2022. It is likely that a final ruling by the Supreme Court may be made in 3 to 5 years.

結語

Conclusions

- 日本對LGBTQI+ 人身安全之保障法制：處於萌芽狀態，有待急速發展。

Legal protection of the personal safety of LGBTQI+ in Japan: still in an early stage and awaiting for speedy developments

- 前提：LGBTQI+ 公共議題化

Precondition: making LGBTQI+ rights a public agenda

- 法律：保障平等權利，會推動去污名化，營造安全的生存環境。

Legal statutes: protecting equal rights, promoting de-stigmatization and creating a safe living environment

- 訴訟：關注婚姻平權訴訟的進展，有望透過司法途徑奪回權利。

Lawsuits: following the progress of marriage equality lawsuits, and it is likely to secure the right through the judicial path.

- 最大的阻力：來自執政黨內的保守派（資深男性議員為多）

The biggest obstacle: the conservative power within the ruling party (most of them are senior male legislators)