

LGBT Rights in Japan

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Until recently, Japanese laws made no mention of lesbian, gay, transgender, and bisexual issues whatsoever. But this has begun to change under the influence of so-called *tōjisha* (the party concerned) movements and, in the case of transgender issues, also because of a plastic surgeon who wanted to broaden his experience in penis construction. The gay and lesbian *tōjisha* movements find their origin in JILGA, the Japan International Lesbian and Gay Association, which was founded by Minami Teishir in 1984. Within two years, a group split off from JILGA, calling themselves “Occur” and, in the 1990s began using the concept of *tōjisha*, demanding to be consulted by policymakers where gay issues were concerned.

Occur developed their strategy during the years they were engaged in a lawsuit in the town of Fuchu, a part of suburban Tokyo. This suit focused on a case of discrimination, in which Occur had been denied access to the *Seinen No Ie* (a youth-hostel-type facility), controlled under the auspices of the mighty Tokyo metropolitan government, which was the defendant. While Occur was staying at the hostel, problems arose when Occur leaders explicitly stated to other group leaders that they were a gay organization. Occur members were the recipients of derisive jokes, and called *okama* and *homo*, both of which can be construed as pejorative depending on the context. Members of other groups peeked in or jeered while Occur members were having their bath (which is a common occurrence, as the baths in facilities like this in Japan are large, shared, and open to everyone simultaneously).

Whereas the Metropolitan government could have denied Occur access to the facility on the basis of preventing such conduct, they chose instead to argue for their exclusion on the basis of moral grounds, claiming that facility guidelines mandated that they provide a healthy environment for youths to thrive in. The government provided definitions from an out-dated dictionary to establish that homosexuality was unhealthy. Occur countered these definitions with newer ones in line with the American Psychiatric Association guidelines, which have been accepted by the Japanese psychiatric profession. Occur had earlier tried

(unsuccessfully) to add these new definitions to dictionaries and encyclopedias throughout Japan.

The *Seinen No Ie*, failing in this strategy, then claimed the reason they excluded Occur was because sleeping arrangements were divided by sex with the goal of preventing people from engaging in sexual activity. With gay people, such separation was impossible. To prevent them from engaging in sexual activity, the facility would have to provide single rooms, which were not available. In their appeal, Occur claimed that it was a prejudicial to assume that gay men always have sex when they have a chance and that the rules of the *Seinen No Ie*, which include a prohibition of sexual activities, were sufficient to prevent such issues. Occur won the lawsuit and the Tokyo metropolitan government was required to pay indemnities in a verdict legally based on the Japanese constitution, which prohibits discrimination, although not explicitly against gay and lesbian people.

As a result of this suit, a legal definition of male homosexuality was created for the first time in Japan. Previously a law—established in the late nineteenth century, just after Japan had been forced to open its borders to the United States and other nationals—had made sodomy (*keikanzai*) illegal. This law—in line with mainstream Japanese constructions of homosexuality throughout its history and persistent to this day—regarded homosexuality not so much as something personified in particular individuals, but rather as an activity in which people may or may not engage. Nevertheless, this law was withdrawn only after a short period under the influence of a French lawmaker, cooperating with the Japanese to draw up a new criminal code.

The definition of homosexuality the court now uses is borrowed from U.S. mainstream gay movements, referring to it as a sexual orientation (*seiteki shikō*) inherent to particular individuals, which signifies a departure from existing Japanese constructions. The goal of this definition, as in the United States, is to stress that gay men (Occur hardly discusses lesbians, even though their English name is Organization for Lesbian and Gay Movement) identify themselves on intrinsic qualities rather than external actions. The movement's rhetoric combines this definition with a stress on gay men, the *tōjisha* in this context, being the victim of discrimination by a homophobic society.

Occur's history within the movement has changed in recent years. Occur is a small organization with limited impact among gay people in Japan. After the demise of the JILGA and its platform magazine, *Adon*, in the late 1990s, there are no longer any magazines that publish Occur's views. Very few of today's gay youth even know about Occur's existence or history. One reason may be that Occur shifted its focus from strictly gay issues to HIV issues, which helped them attract funding from the ministry of health, welfare, and labor (*Kōseirōdōshō*).

From the mid-1990s, new directions in gay rights movements and visibility broadened, particularly outside Tokyo and partially as a result of the success of two newly founded gay magazines, *Badi* and *G-men*. Both publications soon became and remain the largest to this day, with little competition after the demise of not only *Adon* but also *Sabu* in 2001 and *Barazoku* in 2004. *Badi* and *G-men* expand the discourse on sexual identity by stressing positive aspects of both gay life and sexual activities in general. Under their influence, frank and open discussions of sex have become much more common in gay circles, allowing greater freedom to discuss HIV-related issues.

Additional groups have emerged from this perspective, like MASH (Men and Sexual Health) and AKTA, which locate themselves in the middle of the gay scene with their meeting places in Tokyo (AKTA) and in Osaka (DISTA), which are well-connected in the medical establishment. Occur remains more of a fringe group now, its funding threatened by those other groups who are more closely allied to the medical establishment and AIDS prevention foundations funded directly by the department of health. Occur also seemed to lose grounding within their *tōjisha* movement (and caused divisiveness with other movements as well) by limiting their depiction of gay men. Their representation posits that there is no distinction between gay men and monogamous straight men apart from an erotic and emotional attachment to members of the same sex. Their goal with this representation of gay identity was to gain acceptance by a perceived mainstream straight establishment.

Occur is also losing its place within the realm of HIV support services. The *Badi*- and *G-men*-related support movements established HIV counseling places in the major gay bar areas in Osaka and later also in Tokyo, which stand in contrast to Occur's office in Nakano, a 20-minute train ride from the gay area. *Badi* and *G-Men* do not offer formal counseling but provide information on where to obtain counseling, such as with AKTA and DISTA. Their counseling is limited to the telephone, whereas other groups have more direct one-to-one contact with those concerned. Information offered by *Badi* and *G-men* is likewise not restricted to information about safer sex or monogamy, but goes much further in discussing people's problems with using condoms and their anxieties relating to HIV. They also do not condemn people who willingly and knowingly engage in risky behavior. At the same time, they reach out to straight people who wish to develop their sexuality in more diverse ways and, as a result, a broader coalition is created with, for example, the burgeoning "Sard M" scene. They also connect with sex workers, like Akira the Hustler, a former sex worker who continues work as an artist, while receiving research funding from the department of health, welfare, and labor to investigate HIV issues in a gay context and to work for AKTA.

Gay identity in Japan seems to continue the way it had before U.S. influence brought in the human rights discourse on sexuality. It is part of a coalition of varying sexualities, including fetishisms, consensual incest (which was seen as perfectly acceptable by a recent national poll), and necrophilia. The scope of this coalition means that it is directed at sexual liberation overall, and the right to have unhampered gay sex is but one issue among many.

The *tōjisha* discourse has also come to be used by the transsexual movement, which strives for the right of sex-change surgery and recently has seen a victory with the adoption of a new law allowing post-operative transsexuals a change of sex in their registration. This *tōjisha* movement, however, has similar problems to those faced by Occur. Their adoption of the term transgendered has worked to silence the fact that the vast majority of Japanese transgendered people do not desire sex-change surgery. Japan's transgender discourse and practice balances itself between genders rather than being fixed in an either/or dichotomy. Stressing that theirs is a medical problem (by using the newly created Japanese term *seidōitsuseishōgai*, which is the Japanese rendition of "gender identity disorder"), they focus on *shōgai* (handicap) and stress their victimhood.

The sex change movement has had some success in that new regulations now make it possible for some people to receive sex-change surgery, but the conditions under which it is allowed stipulate that they must sign a contract making promises about their conduct later in life. These include an agreement not to work in the entertainment industry, where many transgender people find employment. Thus, if they want to continue in their occupations, they cannot legally have surgery and must resort to self-funded clandestine surgery, or surgery abroad. Recently, people who have completed sex-change surgery can now also apply for a change in their legal sex to agree with their transitioned identity, helping to prevent problems in situations where proof of identity is required.

Other recent developments are proposed anti-discrimination laws currently in debate. These laws, like the 1986 law against sex discrimination in the workplace, will most probably be no more than advisories but will nevertheless promote discussion on discrimination. When the ministry of health, welfare, and labor began investigating this law, sexual minorities were not included in the categories to be included, but after a brief signature campaign created by Occur, gays and lesbians were added to the list of categories.

Actual cases of discrimination on the basis of sexual preference remain relatively uncommon in Japan. Gay, lesbian, and transgender teachers in all levels of education come out in their jobs without it leading to any problems. Similarly, the army (euphemistically called self-defense forces),

when being asked about their policy toward gays and lesbians following the U.S. debate during the Clinton presidency, answered that it was not an issue, and individuals within the forces indicated that as long as same-sex relations did not lead to fights or other trouble, there were few, if any, barriers to their inclusion in the armed services.

In housing, discrimination exists against single men, especially once they become older or if they want to live with other men. This discrimination occurs less for women who wish to live with women mostly because they still receive lower incomes than men, and living together is more often than not viewed as an economic necessity. But the housing situation is improving too, which may be partly a result of the economic crisis, which led to less demand in housing as people live with their parents longer, and also of municipalities becoming less strict about only leasing apartments to married people. There is likewise a shift among brokers and landlords toward a younger and more tolerant generation.

Although many MTF (male to female) transgender people feel that they can only work in the entertainment industry, there has been an increase of those who work in more standard occupations, albeit not usually with the major companies. For FTM transgender people, the situation has always been better. As long as they can do a man's job, smaller employers hired them and treated them as men. But sex discrimination in Japan is widespread, and MTF transgender people will face the overall discrimination that many women find in the workplace.

Physical violence against gay and lesbian people is uncommon. About every five years, incidents of gay bashing and extortion take place in gay meeting places in parks, only to dissipate after a while. Physical violence against lesbian women is rarely, if ever, reported, although until the end of the 1970s, it was not uncommon for families to place their lesbian daughters in mental institutions. Physical violence against transgender people is also uncommon. Drag queens as well as transvestites live openly and in public without problems.

Same-sex marriage does not exist in Japan, although some lawyers maintain that the current marriage law does not contain any major impediments. Generally, same-sex marriage is seen as highly unfeasible in the present situation, where the Japanese government is still investigating whether to allow a couple to keep both their own names in marriage, notwithstanding a feminist-driven movement that has aimed for that goal since the 1980s.

There are loopholes, like the adoption of one partner by the other, which creates a legal bond at least as strong as marriage and is being used increasingly. Other loopholes include creating a will and legally appointing one's partner by a joint living agreement (*kyōdō seikatsu sengen*) that allows partners to make health and life-issue decisions for the

other. These agreements, although originally developed by heterosexuals who did not wish to marry legally, are valid in court. There is little reason to assume they would not include same-sex couples.

Discussing LGBT human rights in the Japanese context has an artificial side to it. Although it is true that some legal improvements have been reached or are on their way, and these are important in themselves, to the vast majority of LGBT individuals they are of little interest. Japan, unlike the United States, is not a very litigious society. In fact, Occur was harshly criticized by others for their role in the *Seinen No Ie* lawsuit. Much more important than legal developments are developments in the social field. The increase in written sources on homosexuality, transgender issues, and sex in general has made life much easier for younger individuals with feelings or interests that divert from monogamous heterosexuality. The advent of the Internet, which brings many opportunities for people to join news groups and online discussions, have been a boon for all queer youth around the world that have access to the technology. Finally, media coverage has familiarized most Japanese to some extent with gay, lesbian, and transgender issues in a positive and supportive manner.

RECOMMENDED READINGS

- Lunsing, Wim. 1999. "Japan: Finding Its Way?" in *The Global Emergence of Gay and Lesbian Politics: National Imprints of a Worldwide Movement*, Barry Adam, Han Willem Duyvendak & André Krouwel (eds.) Philadelphia: Temple University Press.
- Lunsing, Wim. 2001. *Beyond Common Sense: Sexuality and Gender in Contemporary Japan*. London, Bahrain, and New York: Kegan Paul.
- Maree, Claire. 2004. "Same Sex Partnerships in Japan: Bypasses and Other Alternatives." *Women's Studies*. 33(4): 541–549.
- McLelland, Mark & Romit Dasgupta (eds.) (forthcoming) *Genders, Transgenders and Sexualities in Japan*. London and New York: Routledge.

Wim Lunsing received his MA in Japanese Studies from Leiden University, 1988, and his PhD in Anthropology from Oxford Brookes University, 1995. He taught at Oxford Brookes and Copenhagen and was a research student at Kyoto Seika University (1991-1993) and a research fellow at Tokyo University (1996, 2001–2002) and has been conducting fieldwork in Japan since 1986. He is the author of *Beyond Common Sense: Sexuality and Gender in Contemporary Japan* (Kegan Paul 2001) and numerous papers on sexuality, gender and research methods and ethics in Japan, recent ones including "Japanese Sex Workers: Between Choice and Coercion," in *Sexual Cultures in East Asia: The Social Construction of Sexuality and Sexual Risk in a Time of AIDS*, Evelyne Micollier, ed. (RoutledgeCurzon 2004) and "The Politics of Okama and Onabe: Uses and Abuses of Terminology Regarding Homosexuality and Transgender," in *Genders, Transgenders and Sexualities in Japan*, Mark McLelland and Romit Dasgupta, eds. (Routledge 2005). While his exploits in the area of sexuality and gender in Japan continue, his latest projects include individual ways of dealing with the changing employment situation in Japan, migration and multi-ethnic societies, and sustainable development. *Correspondence*: wim0wim@hotmail.com