

# Improving the Status of Women

—The Legal Status of Women and Recent Trends in  
Amendments of the Law in Japan—\*

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## Introduction

I am honoured to be present today and to have been asked to address you in this LAWASIA's First Conference on Family Law and the Rights of Children. Over one hundred nations have ratified the Convention of the Rights of Children since it was adopted by the United Nations. There is no doubt that this Conference will assist in promoting the ideals of the Convention in Asian countries and throughout the world.

Japan also wants to play its part in support of these ideals particularly in Asia and the Pacific rim. Japan has not yet ratified the Convention, but is presently considering what adjustments must be made in its own national laws before it does so. I believe that the rights of children are intimately connected with the rights and the position of women in society, and for this reason I have chosen to talk today about

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the present position regarding the legal status of women in Japan and recent trends in amendment of laws affecting the status of women in Japan.

### **The Constitution**

At the end of the Second World War the legal system in Japan was still in many respects feudalistic. This was particularly the case in the area of family law and succession where the law reflected the patriarchal ideals of Confucianism. The new Constitution adopted after the war in 1947 was based on the principles of peace and democracy, and provided for the dignity of the individual and the equality of the sexes. In particular, Article 14 of the Constitution provides for the equality of men and women before the law; Article 24 prohibits discrimination on the basis of sex in marriage, divorce, inheritance and all other aspects of family law; and further provides that the dignity of the individual must be respected.

I should mention that in Japan the law of inheritance has been and still is an element of family law.

The Constitution was an important advance in the legal status of women, and had more far reaching effects. All directly discriminatory provisions have been eliminated from such areas of the law as education, labour law, criminal law and family law.

Family law forms part of the Civil Code. Chapter 4 of the Civil Code is "Family Law" and the Chapter 5 is the "Law of Succession." These chapters were completely rewritten after the Constitution was adopted. Article 1, paragraph 2 of the revised Civil Code states that:

"This code shall be construed the standpoint of the dignity of in-

dividuals and the essential equality of the sexes.”

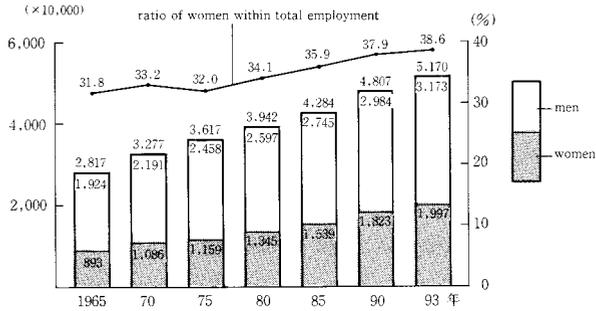
The new laws recognize the equal status of women. However, the fact that the legal status of women is equal to that of men does not mean that social or economic inequality has disappeared. It is far easier to change the law than it is to change accepted roles in life and social attitudes. It will take some time to obtain real equality for women, and we are still far from achieving it. However, it must be said that the constitutional guarantee of the rights of women has affected the public awareness of women's rights and has had significant impact on peoples' attitudes.

### **The Review of the Law Since 1977**

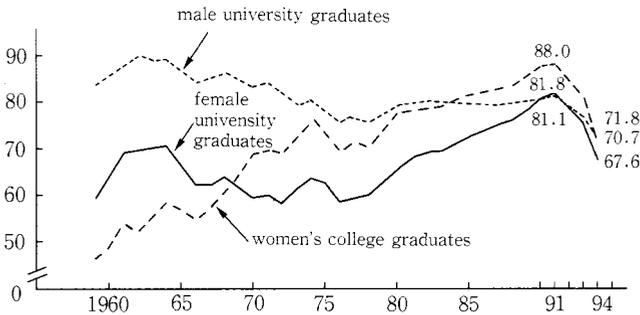
In 1977, thirty years after the adoption of the new Constitution, there was a thorough review of the law in Japan to ascertain whether there were any provisions that discriminated on the basis of sex. This review was facilitated by the feminist movement which had been inspired by the United Nations “Decade for Women” during the period 1976 through 1985.

When the United Nations General Assembly adopted the Convention on Elimination of all Forms of Discrimination, Japan signed and ratified the Convention. In accordance with the principles of the Convention, several domestic laws were amended, and new statutes were enacted. The most significant was an enactment of a statute guaranteeing equal opportunity in employment for men and women. This law has led to an increase in opportunities for employment for women and great improvements in the suitability of workplace environments for women. Figure 1, 2 and 3 of this paper shows the position of women workers in Japan. Figure 3 illustrates the increasing

**Figure 1** Total number of employer



**Figure 2** Employment rate of university graduates



**Figure 3** Ratio and number of women employer dependent on marital status



percentage of married women in employment. The increased percentage of married women in the workforce has brought its own problems as women try to reconcile the conflicting demands of employment and their family responsibilities, especially, the sometimes conflicting demands of children and career. Accordingly, the need of maternity leave, and child care leave has been recognized, and the introduction of these measures has improved the working environment for women.

In this manner, the ratification of the Convention by Japan has not only resulted in amendments in domestic laws, but has introduced real changes to the status of women, and has had immeasurable social impact. Japanese society is changing, and is moving towards the essential equality of men and women.

### **Present Trends in the Review of the Law as It Concerns Women**

There is now no direct or overt discrimination against women in family law in Japan. However, there is concern that the effects of some aspects of the law place women at a disadvantage.

There has recently been established a Legislative Council of the Ministry of Justice. The Family Law Sub-Committee of this Council is reviewing the law to ascertain whether there are still provisions which in practice discriminate against women. In particular, the Committee is concerned about:

- 1) The waiting period for women to remarry after divorce;
- 2) The surname of women after marriage;
- 3) Grounds for divorce.

#### **1) The Waiting Period before Re-marriage.**

The Japanese Civil Code provides that if a women wishes to remarry after the dissolution or annulment of her marriage, she must wait for six month.<sup>(1)</sup> It is argued that as there is no similar provision for men the requirement is discriminatory.

Alternatively it is argued that there is a rational basis for the provision. The waiting period concerns problems regarding children of a marriage and presumptions relating to the birth of illegitimate children. For example, Article 772 of the Civil Code provides:

“A child conceived by a wife during marriage shall be presumed to be the child of the husband.

A child born two hundred days or more after the date of marriage, or born within three hundred days from the date on which the marriage was dissolved or annulled shall be presumed to have been conceived during the marriage.”

The question was considered recently in a case in Hiroshima where the District Court and subsequently the High Court ruled that the re-marriage provision had a rational basis and did not violate the principle of equality.

## 2) Surname after Marriage

This is a very sensitive area in Japan since family connections are still extremely important. It is the usual practice, as in most Western

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(1) Japanese Civil Code Article 733;

“A woman may not re-marry unless six months have elapsed from the day of the dissolution or annulment of her previous marriage.  
2. In cases a woman is pregnant from before the dissolution or annulment of her previous marriage, the preceding paragraph shall cease to apply as from the day of her delivery.”

countries, for the wife to take the husband's surname after marriage. Exceptions are rare, however, may for instance occur where there is no surviving male heir in the wife's family, and she succeeds her father as head of the family and her husband takes her name to ensure the family name continues. A similar situation occurs also in Western countries where sometimes both names are hyphenated. A Japanese grave is made to memorialize those within a direct family line, which is signified by the use of the same surname.

As the selection of a surname is by consent<sup>(2)</sup> it is argued that there is no discrimination or inequality. On the other hand, the social pressures are so great on the women to conform to the practice of adopting her husband's surname that, while there may be no formal discrimination, there may be practical inequality resulting in the women losing the name she has used before marriage.

The sub-committee is at present considering a system of selective surnames for the husband and wife, but it would seem that the law cannot provide an easy solution for a deeply entrenched social custom.

### **3) Grounds for Divorce**

There are four ways by which a marriage may be dissolved in Japan: 1) divorce by decree; 2) divorce by mediation; 3) divorce by trial; 4) divorce by consent.

Divorce by consent is a system by which the parties discuss between themselves the basis of their separation including matters concerning

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(2) Japanese Civil Code Article 750;

"Husband and wife assume the surname of the husband or wife in accordance with the agreement made at the time of marriage."

their children and the family property. After reaching agreement on all issues and agreeing on divorce the parties file in the Ward Office for Notification of Divorce. In this case, there is no intervention by the courts. About ninety percent of all divorces are fall into this category.

About ninety percent of all divorces involving the Courts are divorces by mediation. The process has been described above.

Divorce by decree is very rare, but where the parties are in dispute, but agreed on the divorce the Court may make a decree of dissolution.

About ten percent of divorces in the courts proceed to trial. Article 770 of the Civil Code provides that a party to a marriage can bring an action for divorce only in the following five circumstances:

- 1) If the other spouse has committed an act of unchastity;
- 2) If he or she has been deserted maliciously by the other party;
- 3) Where a spouse has disappeared and for three years it has been unknown whether the spouse is alive or dead;
- 4) Insanity - where the other party is severely affected by a mental disease from which no recovery is expected;
- 5) If there is any other grave reason which makes it difficult for the party to continue the marriage.

These grounds for divorce represent a mixture of fault and ir-retrievable breakdown of marriage.

One issue at present causing concern and promoting argument in the courts and among academics is whether the party at fault can sue for divorce. The courts have continually rejected the argument presented by the spouse at fault that a divorce is necessary because of breakdown in the marriage, because normally the spouse at fault has caused the breakdown.

These earlier decisions were overruled by a decision of the Supreme Court on September 2, 1987.<sup>(3)</sup> The case caused a sensation in the media. Sensational headlines appeared:

“Divorce by Spouse at Fault Approved!”

“Unfaithful Husband’s Demand for Divorce Approved!”

A friend of mine who is a lawyer told me that following this decision he was approached by male clients who admitted they were having affairs, and asking whether they could now divorce their wives and live happily with their lovers. Needless to say, my lawyer friend was quite astonished at the number of affairs taking place. However, my friend had to tell his hopeful clients that the solution was not as simple as they thought. Since the decision of the Supreme Court imposed three conditions.

The first condition required a long separation period. The parties connected in the Supreme Court case had been separated for 36 years. The second condition was that there must be no child involved. The third condition was that it had to be demonstrated that the other party was not severely affected by the divorce.

Not only did the Supreme Court require a complete breakdown of the marriage, but the three conditions above also had to be met. My friend’s clients were disappointed. They are not allowed an easy escape from their marriages.

The case I cited demonstrates that, apart from consensus between the parties reached informally or through court supervised mediation, divorce is not readily granted in Japan. Even where a breakdown is evident, the other conditions must be met before a divorce will be

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(3) Judgment of September 2, 1987, Saiko Saibansho Daihotei (the Supreme Court, Grand Bench), Minshu, Vol. 41, No. 6, p. 1423.

granted. Although men and women appear to be equally affected it is women probably suffer most from being compelled to continue living in the meaningless relationships of broken marriages. It must be asked whether, after there has been a complete breakdown of the relationship, there is any value in maintaining the outward form of the marriage. It would seem better to do away with a marriage that has in fact lost all substance. There is a strong case for an objective reconsideration of the grounds for divorce under Japanese law.

The Committee is also concerned at the generally unfavorable treatment of women in property settlement after divorce. While the position of women has unquestionably improved in Japan both legally and socially, they do not yet have the effective status of women in most western countries. The result of the Committee's deliberations on these matters will be of great importance to the status of women in Japan.

### Conclusion

I have attempted to outline trends in amendments to family law in Japan as they affect women. It is of course not possible to separate the law from the social system that supports it. There are many differences and similarities between countries represented at this Conference in the law, religion and culture as they affect family relationships. By examining similar issues and approaches adopted in different countries we can all improve our knowledge of family law and perhaps all gain some insights which may contribute to the improvement of our legal systems. If any of us are able to benefit in this way the Conference will have been a success. Thank you.