



THE PATH TO GENDER EQUALITY IN JAPAN

BY HAYASHI YOKO

Source: AMPO Japan-Asia Quarterly Review vol. 25, no. 4-vol.26-1.

The Japanese government has often been criticized over its male-centered policies and institutions. Since ratifying a key U.N. convention, however, it has been reluctant to take appropriate measures. Hayashi Yoko, a lawyer who works on issues of human rights, analyzes the ways in which the government has improved its discriminatory legal framework and what it has accomplished regarding the legal and substantial equality of gender.

It has been ten years since the ratification, in 1985, of the UN Convention on Elimination of All Forms of Discrimination Against Women (CEDAW). The Japanese government was initially hesitant to ratify the Convention after it was adopted in the UN General Assembly in 1979. But at the 1980 Copenhagen Conference (during the UN Decade for Women) it finally ratified it. This was achieved through the efforts of women's groups all over Japan, by the work of women Diet members and by women in the mass media who shaped public opinion.

The CEDAW obligates signatories not only to abolish discriminatory laws against women, but also to take measures to abolish discriminatory customs. It is said that the Convention aims not only at "equality before the law" (*de jure* equality) but also "substantial equality" (*de facto* equality).

EQUALITY IN EMPLOYMENT

The central reason for the Japanese government's hesitation to ratify the CEDAW was that Japan did not have the legal framework required by the Convention to prohibit discrimination against women in employment. Just before ratifying it, however, the government enacted the Equal Employment Opportunity Law (EEOL), claiming that this fully provided the required standards. Suspicions remain, however, that the EEOL violates the Convention.

What is clear, in any case, is that this law has not changed the work place for Japanese women over the past decade. At present, women make up 33% of the total work force, and their average length of service has increased to 7.3 years. Their salaries, however, are only 60.2% (and this excludes part-timers) of what men earn. If we include part-time workers this rate drops to just 49%.

Many companies reacted to the enactment of the EEOL by introducing a "career track system" for their employees.

They divided their employees into two categories: managerial track, or *sogoshoku*, and general clerical work, or *ippanshoku*. People in the *ippanshoku* track (most of them are women) are never transferred to other branches, and this is where women have found themselves. Companies manage women and men differently. There have been many reported cases of women choosing *sogoshoku* to work the same amount as men but faced discrimination in placement and promotion, and were forced into conditions where they cannot cooperate with the other women in *ippanshoku*.

The government, for its part, began a policy to cope with the "problem" of decreasing children. The Day Care Leave Act was enacted in 1992 and workers, regardless of sex, in both public and private sectors can take a leave for one year to raise babies. Starting from April 1994, 25% of the salary has been provided to employees during their leave, and they have been exempted from local taxes. A similar act to allow workers to take leaves to take care of aging parents has been presented in the Diet and will soon be passed.

We can thus see that the government is trying to encourage women to work longer, while at the same time helping them to have babies and giving them time to take care of them. During the last decade, however, there have been no new policy initiatives to give equal treatment to women in employment.

The reason why the Japanese government can ignore demands by women for equal treatment is that it does not recognize them as individual human beings. The government sees all women as "housewives," or workers giving partial support to their families. The tax and social insurance systems treat married women as possessions of their husbands, labelling them "dependent family members," and encourages them to only work enough to receive an income not high enough to be taxable.

The demands of the women's labor movement are for equal payment and the establishment of affirmative action programs. They are calling for a substantial revision of the EEOL, which merely says that "employers have the duty to achieve" goals in promotion, recruitment and employment. Many women also want to see the formulation of a clear definition of sexual harassment as well as the establishment of provisions to punish assailants.

NUMBER OF PREFECTURAL GOVERNORS, CITY MAYORS, AND HEADS OF TOWNS AND VILLAGES, BY GENDER

year	Prefectural Governors		Mayors		Heads of Towns and Villages	
	Female	Male	Female	Male	Female	Male
1980	0	47	0	644	2	2,606
1985	0	47	0	650	2	2,597
1990	0	47	2	660	1	2,569

Source: Ministry of Home Affairs

Along with these movements, women are questioning the tax system which contains preferential treatment for "housewives," and hope that the system will change to make the unit the "individual" rather than the "household."

EQUALITY IN FAMILY LAW

It came as a blow to many women when the government failed to revise the family law at the time it ratified the CEDAW. The government insisted that the Civil Code guarantees "equal rights for women and men" and there was no need to revise it before ratifying the Convention.



During the last decade, however, many cases have been filed demanding, for instance, for married couples to be able to carry different surnames, the abolition of discrimination against children born out-of-wedlock, or the abolition of a provision which forces women to wait six months after a divorce before remarrying. In a case involving discrimination against children born out-of-wedlock in terms of inheritance, the Tokyo High Court ruled in 1993 that this practice was unconstitutional, and the Supreme Court is now set to issue its own ruling.

In the midst of this, the Ministry of Justice began in 1991 a revision of the Family Law, and issued a "draft for a platform for revising the Civil Code" in July 1994. At present, a council is collecting opinions from experts in various fields. Concrete plans for the revision have not yet been made, so I will point out the critiques that women have of the current Civil Code:

(1) Marriageable age: The Civil Code stipulates that men must be at least 18, and women at least 16, to be able to marry. This treatment, however, is discriminatory and should be changed to an equal one.

(2) Period of prohibited remarriage: In a very discriminatory provision, women are prohibited from remarrying until six months after a divorce. It is explained that the goal of this provision is to avoid the confusion over the identity of the father in case the woman becomes pregnant. However, at present it is possible to identify the father of a baby through medical examination.

(3) Denial of legitimacy by mother: Babies who are born to a married woman are automatically presumed to be the husband's, but the husband has the right to deny paternity. This provision can deprive mothers, children, and real fathers the right to know the truth. The law should be revised to give mothers a say in regard to the granting of legitimacy.

(4) Forcing married couples to bear the same surname: Under the Civil Code, married couples must bear the same surname, and in 97% of cases couples use the husband's name. This provision discriminates against women who want to retain their own family names. The freedom to choose one's own family name should be guaranteed.

(5) Discrimination against children born out-of-wedlock: Under the Civil Code, an illegitimate child receives only half the inheritance amount given to a legitimate child. The rationale behind this provision is that it protects legitimate marriage. This should not, however, be used as a reason for discrimination against their children. We must abolish this discrimination. Up until recently, legitimate children have been listed as "first son" or "first daughter" in residential cards and family registers, whereas children born out-of-wedlock were listed simply as "child." In 1994, however, the Ministry of Home Affairs issued a circular notice saying that all children should be listed simply as "child." The Supreme Court will soon issue a ruling concerning the discriminatory provision on inheritance, and there is strong possibility it will be deemed unconstitutional.

In addition to the above, some part of the draft of the Civil Code revision written by the Ministry of Justice suggests the introduction of "no fault divorces." Some women are criticizing this.

REPRODUCTIVE HEALTH AND RIGHTS

The Criminal Code, which was drafted in 1908, prohibited abortion and the government encouraged a "more birth, more children" policy during WWII. After Japan's defeat this policy was changed into one of population control, and the Eugenic Protection Act legalized abortion in some cases.

This Eugenic Protection Act derives from the National Eugenic Act which was devised by the Nazis. It aims at the annihilation of inferior genes by means of abortion. Under this law, "economic reason" can be sufficient grounds for abortion, as can pregnancy caused by rape, and threats to the mother's health. It is possible to say that Japanese women acquired the "right to abortion" earlier than women in other countries, but punishments for abortion remain in the Criminal Code. Proposals to eliminate the economic reason from the provisions of the Eugenic Protection Act were submitted to the Diet in 1972, 1973, 1982, and 1983, but they did not pass.

The law does not stipulate how late into the pregnancy an abortion can be performed. In a 1989 ordinance by the Vice Minister in the Ministry of Welfare, the period was cut from 24 weeks to 22 weeks. It can be said this action demonstrates the government's fears of falling numbers of children.

In addition, the Eugenic Protection Act requires the "consent" of the unborn child's father before performing an abortion. This violates the women's rights to abortion as one of the rights of privacy.

There are many other problems concerning reproductive health and rights. One major issue today is the rapid development of reproductive technology. No brakes have yet been placed on the commercial use of surrogate mothers or surrogate deliveries. Last year 13,000 people used in vitro fertilization, but the use of fertilized embryos is not under control of any law. The government just depends on moral regulation by the Medical Association for decisions on the use of fertilized embryos. The long and short term effects of the use of hormones on women's bodies must be more carefully studied and publicized.

POLITICAL PARTICIPATION

In 1946, the first election in which women could participate, 39 women were elected to the House of Representatives. The following year, however, their number dropped to 15, and has not recovered. In the House of Councilors 12 women were elected in 1950, since then their numbers have gradually increased and in 1989 came to a peak with 33 elected women. It is said that it is easier for women to win seats in the House of Councilors, which has a proportional district system, compared to the House of Representatives, which has typically had multi-member districts. In the 1989 House of Councilors election, Doi Takako, the chairperson of the Social Democratic Party of Japan (SDPJ), helped many women to be elected amidst a voter upswell against the consumption tax.

We need to review the electoral system today, and to get political parties to formulate affirmative action policies to allow women to participate in the process of decision-making.

Today the political arena is in the midst of the largest reform since World War II. A new electoral law, based on single-member districts, has been enacted. No election has been held under the new system yet, but many people predict that the number of women Diet members will fall even further due to harsh competition and political parties' ignorance toward encouraging women candidates.

In addition, the SDPJ, which once stood women candidates under a platform of "protecting the Constitution" and "peace," changed its basic policy as it formed a coalition with the Liberal Democratic Party (LDP). It is uncertain where the few hundred million women who once voted for the SDPJ will go. Many people now feel that it is critical for Japanese women to create a new political movement centering on grassroots/feminists movements, which will replace the SDPJ. My view is that the conditions for Japanese women in the future will be greatly affected by the outcome of such efforts.▲