

Legal, Economic and Social Barriers to Equality in Japan's Labor Market

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FOREWARD

The article has been written from a framework of Western thinking by a U.S. scholar. Although I view the presentations in this article as absolutely correct from a Western point of view, there is no doubt that the Asian and U.S. way of thinking in regard to society, culture, races, and roles are quite divergent. To illustrate, the average U.S. citizen is slightly, if not very, appalled at the traditional concept of a Japanese woman walking behind her husband, or the fact that it is expected that a woman would serve tea in a mixed male-female group. To a Westerner, this is a subjugation of females to inferior roles, and a blatant display of chauvinism. However, traditionally in Japan, the pattern of walking behind a man was historically a way for a man to walk into an area first in order to protect the woman. The serving of tea shows a woman's respect to her husband shows her talents in the art of serving tea, giving her honor, as she is gracious and selfless enough to show respect and humility in public. It should also be noted that part of a samurai's training was traditional tea-ceremony, and the most gracious and honorable act of a samurai might be the serving of tea in traditional tea ceremony to his wife or to the woman he loved and respected.

Although I do believe that Japan must move forward in opening to world-wide views of women in working societies, this article does not wish to cast blame or fault on the society in its treatment of women. This article is merely an empirical view of how women in Japan function in a labor environment, and how new attitudes integrated into the Japanese society may assist in improving the ability of Japan to increase its use of a valuable labor resource (women) into its labor market.

I. INTRODUCTION

In June of 1985, Japan's Prime Minister Nakasone signed the Danjo Koyo Kikai Kinto Ho (hereinafter referred to as an The Equal Employment Law [EEOL]). The EEOL was expected was expected to eliminate major differences in salaries in Japan for men and women who do the same kind of work. In addition, the EEOL was intended to abolish discriminatory employment practices between men and women in the areas of recruitment, training, fringe benefits, promotions, retirement ages and welfare benefits.

The author would like to thank Mr. Isamu Maruyama of the International House of Japan in Tokyo for his assistance in obtaining certain Japanese date and literature, and Ms. Maki H. Waronoff of Washington, D.C. for her translation expertise.

The passage of this law raised once again an unsettled controversy among analysts of Japan's labor practices. Proponents of the law said that such a statute seemed to represent a movement toward the increased use of women in Japan's labor market. The idea was that this movement would not only enhance the domestic economy, but would also aid Japan in its global competition. However, critics stated that the law would be ineffective in changing the woman's status in the workplace, since there are few, if any, penalties imposed upon industry for non-compliance. In addition, there is the problem of the cultural role of women in the Japanese society. In a country where the usual roles of most women are as wives and mothers, and where divorce is practiced very little as a matter of tradition, employment practices have followed lines in keeping women within those roles. These roles allowed employment in unusual circumstances that necessitate a woman becoming the primary wage earner—generally in the early years of a woman's life prior to her entry into marriage and motherhood roles, and more recently in middle age after the children have left the home and the woman needed a replacement for home activities.

Upon initial examination, the passage of the EEOL would seem to indicate a change in those traditions in a country where traditions do not change easily. However, the reasons for the law's enactment and the effects of the law are a much more complicated matter than simply the changing of traditions in a modernizing country.

Generally speaking, one of the reasons for the slow change in the woman's status in Japan was traditionally a lack of laws in the area of equal employment. In June 2006, a bill reinforcing the Equality Act was passed and took effect in April 2007. The amended act prohibits not only discrimination against women but protects men as well as women from "discrimination on the basis of sex" (Articles 5-6).¹

Despite movements in Japan toward women playing more Westernized roles, the absence of specific laws supporting equality have created a barrier to change. On its face, the EEOL creates meaningful choices for Japanese women to change their working roles, since there is now a law that publicly supports women's attempts at change. The EEOL, however, is just the tip of the iceberg in regard to women's roles. The social, legal and cultural systems in Japan greatly impact the use of women in Japan's labor force. In this regard, this article will discuss the reasons for the emergence of the EEOL against a backdrop of the role of women in the Japanese society, the role of laws and their usage in Japan.

In order to evaluate the law's impacts on women's roles in Japan, this article will look at women's traditional roles in Japan. General roles within the society and specific roles in the workplace will be discussed. The article will then discuss the discriminating environment in Japan and the legal system's role in this environment. Next the article will analyze laws in Japan and their effectiveness (or lack thereof) in affecting equality in the workplace. Finally, the economic and political effects of the laws and the incentives of using women as a viable part of Japan's workforce will be analyzed. The use of women as an untapped labor resource will be viewed as a necessity outside the passage of any laws concerning inherent beliefs of equality to women.

II. THE ROLES OF WOMEN IN JAPAN

Japan has never fully tapped its female labor resource in fulfilling its needs for economic growth. Professor Kamiya of the Faculty of Law at Hakkaido University has an excellent analysis of the traditional roles of women in the Japanese society. She states that the phenomenon of not using Japan's female labor resource is based on cultural traditional that dictated the roles women play as housewife and mother rather than laborer. However, Kamiya has written that for a woman to be unmarried is not socially acceptable, and few women remain unmarried for their entire lives. Although as early as 1855 some intellectual leaders addressed the issue of the need to use women as a part of the ongoing growth of a modern Japan, there was little notice taken of the ability of women to contribute as a source of labor in Japan's economy.² However, usually the roles of marriage in a Japanese woman's life are seen as being beyond mere tradition.

¹ Sakuraba R., Employment Discrimination Law in Japan: Human Right or Employment Policy, JILPT RESEARCH REPORT, <http://www.jil.go.jp> ≥ clls08_sakuraba (2008) 187.

² Yikichi Fukuzawa wrote a treatise on women in 1885 stating, "If we are to improve our race through our own efforts, we must strive to raise the level of our progeny by making Japanese women more mentally active and physically strong." This approach to women, however, was far from the norm of the day. Shimotsuka, Eiko, ECONOMIC EYE, (Sept. 1982). Translated from EKONOMISUTO .

Kamiya states that in reality, marriage represents “eternal job security” which implies that the institution of marriage provides job security that is otherwise unavailable for women.³ Furthermore, providers of childcare are not keeping up with the increased numbers of mothers in the workplace. In April of 2020, 12,439 children were on waiting lists in the country.⁴ In addition, Japan’s expectations and stereotype of mothers are to be perfect in their domestic roles. Often women, especially those who are mothers, have increased feeling of guilt if they miss home responsibility, such as taking care of their children or parents or participation in school events.⁵

In fact, the roles of women in Japan are not traditionally oriented toward a career, although there may be some change in the minds of the younger generation. In the traditional cultural sense, the expectation that women will be a part of and therefore contribute to the country’s workforce is not considered. It was found that 53.3% of women in Japan who were 15 years and older were a part of the labor force in Japan. This is compared to 71.4% of men in the labor market.⁶ In 2019, the representation of women was 44.4% of the whole Japanese labor force.⁷ Although this statistic appears heartening, in 2019 44.2% of those women employed were in temporary or part-time jobs. This can be compared to a mere 11.4% of men were employed in these kinds of jobs.⁸

Analysts other than Kamiya have indicated that the expectation is not only that women will not contribute, but that they cannot contribute meaningfully to the workplace. A 1980 survey comparing the attitudes of the U.S. and Japanese males toward workingwomen revealed that 3/5 of Japanese males think that men have higher analytical ability” than women. In the U.S. 72% of the males felt that “by nature there are no differences between men and women.”

Kamiya says that the traditional roles of women in Japan, though they may involve entry into and early exit from the labor force upon marriage, generally focus on home and family.⁹ As a result, she concludes that these traditional roles dictate that women in Japan place their personal needs and wants secondary to society’s needs generally and men’s needs specifically.¹⁰

³ Kamiya M., Women In Japan, 10:2 UBC LAW REV. 452 (1986).

⁴ Record-low 12,000 on Japan’s Nursery Waiting Lists, But Zero Goal Out of Reach, THE JAPAN TIMES (September 4, 2020).

⁵ Aoyagi, C. & Munro, A. (2019, November 27). Guilt, G, and Work-life Balance in Japan: A Choice Experiment [Working paper]. INTERNATIONAL MONETARY FUND (November 27, 2019).

⁶ Ministry of Internal Affairs and Communications, Labour Statistical Handbook of Japan 2020, STATISTICS BUREAU OF JAPAN (2020).

⁷ *Supra*, Labour: Table 12.1.

⁸ Ministry of Internal Affairs and Communications, Labour Force Survey. Population Aged 15 Years Old and Over: Labour Force Status, Status in Employment, Type of Employment (Employee by Number of Persons Engaged in Enterprise), DURATION OF EMPLOYMENT CONTRACT, ANED AGRI-/NON-AGRICULTURE (Data Set), 2020.

⁹ The socialization is not in relation to men only, but to the women as well. According to a recent report published by the Hakuhodo Institute of Life and Living (an independent research institute that undertook charting the mental and emotional well-being of Japanese men and women within a four-year period), women in Japan are confused concerning their options outside the home. The Hakuhodo report was entitled “Japanese Women in Turmoil.” It was based on interviews with Japanese women from 35-54 years of age. The confusion stems from an awareness of Japanese women that there are alternatives open to them, either in advanced schooling or careers, and that use of these alternatives may not be a positive alternative for most women. The study concludes that there is hesitation in implementing changes, because as “risk averters,” there is concern of stepping out of traditional roles which may upset the security existing in their homes. Siwolop, Japanese Women: Can they Reach High Enough? SAVVY (February, 1985).

There is an additional concern that is reflected in the Japanese saying that the “nail that stands out gets hammered down.” To change long-standing roles of women creates an undesired “standing out” by women in a society that does not see this as a attribute that will reap positive rewards.

¹⁰ In 1984 the Prime Minister’s office conducted a poll in which attitudes of 3000 women from ages 20-59 were surveyed. Two out of every five Japanese women said that they perceived the job market as inadequate due to limited job opportunities, poor working conditions and unavailable or inadequate child care facilities. However, at the same time, ¾ of the respondents stated that they were satisfied with their jobs. The seeming

Kamiya looks to Japan's old Confucian and Meiji Codes as a basis for the definition of Japanese women's roles. She states that under those Codes, women's roles included obedience to a woman's father, then her husband, and in old age to her sons.¹¹ Although these concepts may not be as pervasive in women's lives as they once were, Professor Kamiya's statistics indicate that these values still have an impact on women's attitudes toward their roles today. She found that at least 95% of the female population in Japan marry. This figure interestingly enough varied little from 1930 to 1984.¹² In 1985, her statistics show that approximately one-half of all women in Japan work, making up 39% of the total labor force. However, the ages at which women work fall within two categories: 20-29 years and 40-54 years of age.¹³ In fact, based on a statistical formulation, Kamiya quoted one analyst in the construction of a typical pattern of behavior for the traditional woman in Japan:

A Japanese woman, after nine years of compulsory education and three years of high school, is likely to become employed. The chances of her attending university or college are one in three, and her major would likely be Humanities. As she is not expected to work for long, her job tends to be auxiliary or menial rather than managerial, and she has little chance of promotion. She earns considerably less than a man and contributes little to family income. By twenty-six, she is probably married and about to have her first child. She may have her second child within three years but plans for no more thereafter. She has given up her job either on marriage or on her first pregnancy. By forty, she has probably returned to the labour market, most likely as a part-time worker without any special skills. Her significance as a worker is often overshadowed by her role as wife and mother. She lives to be eighty years of age and spends the last eight years widowed.¹⁴

By the year 2019 a little more than half (that being 50.7%) of women in Japan entered universities as a step from secondary schools. This increase in advancing to universities was at a rate of merely 15.2% in 1990.¹⁵ In 2019, only 45.4% of women were undergraduate students, yet only 32.4% were students at the graduate level.¹⁶

Such a pattern may also translate into a similar position in the business world.

Indeed, on television, in books and advertisements, the Japanese woman is shown as happiest with an apron over a spotless dress and a child by the hand. Before she marries, she may work as an office lady, a glorified Japanese receptionist who serves tea and bows to guests, all the while looking for a husband. But most companies would require her to live with her parents. They would forbid her to work late hours. In general, they would treat her in a manner that American women would call overprotective and condescending, but that the majority of Japanese women recognize they must accept, like it or not, in a country where companies have traditionally assumed an almost paternal role.¹⁷

ambiguity can be explained by the fact that culturally in Japan if the individual places his or her personal needs and wants secondary, then externalities personally affecting that individual will and should be ignored for a greater good or goal. Id.

¹¹ When Being Equal Is No Fun, TIME 55 (May, 27, 1985).

¹² See Table 5, Kamiya, *supra* note 2 at 466.

¹³ See Table 9, Id. At 467. These ages indicate that women enter and exit the labor market before and after their more "primary" role in the society is experienced, that of wife and mother.

¹⁴ Id. at 452-53.

¹⁵ Ministry of Education, Advancement rate (1948-) [Data set]. SCHOOL BASIC SUREY (in Japanese) 1948-.

¹⁶ Ministry of Internal Affairs and Communication, Statistics Bureau of Japan. (2020). Education and Culture: Table 16.2: Number of University Students, STATISTICAL HANDBOOK OF JAPAN (as of May 1, 2020).

¹⁷ Chira, Susan, A Tough Ascent For Japanese Women, Section 3, p. 2 (February 24, 1985).

Kamiya found that in contrast to a perceived behavioral pattern, it is interesting to note that opinion polls indicate that Japanese women would prefer to work throughout their lives. Despite this, however, she concludes that there is still a significant drop in labor force participation during the majority of women's child-bearing and early child-rearing years.¹⁸ Although Kamiya's study represents the norm, there is some recent change in Japan. Some career-oriented women are opting not to marry, and if they do, decide not to have children as traditional roles dictate.¹⁹

It cannot be underestimated that the legal status of women and discriminatory practices are closely related to the societal roles and expectations of women in Japan. A reflection of this is seen in the external treatment of women in the society. One analyst, A. E. Cullison has noted that wages, opportunities for advancement, and working conditions are different between men and women, and those differences are considered appropriate in the Japanese society.²⁰ Cullison states that wages are directly related to continuity of employment and seniority, and concludes that women, by the fact that they often have neither of those attributes, usually have lower wages than men, and have few opportunities for promotion to managerial positions.²¹ Kamiya's conclusions about such a system is that the outcome, for the most part, is that the men dominate established professions while women assist through jobs such as technicians, secretaries and assistants.²² A recent survey by the Japan Institute of Women's Employment revealed that Japanese women generally do not desire management positions. Of the surveyed companies, only 24.9% engaged women in managerial positions. This attitude of reticence to seek managerial positions is attributed to the lack of legal and social support to the working woman, such as child-care programs for working mothers.²³ Another survey indicated that "Japanese women tend to be content with their domestic role and don't covet the lifestyle of workaholic Japanese men."²⁴

¹⁸ *Supra*, note 2 at 450. The author gives an analysis of the statistical opinion as well. Commentaries regarding the effect of the entry of women in the workplace are sometimes viewed by Western standards as a matter of choice by the Japanese society as a whole in relation to its cultural impact. For instance, a 1983 publication issued by Japan's Sanwa Bank stated that "in the American mode, the increase in the number women entering the work force was followed by the appearance of numerous phenomena, such as the rise in the proportion of single women, the decline in the birth rate, the increase in divorce, and the increase in the number of men living alone. In the long run this may also lead to the erosion of the vitality of the nation." Cullison, A.E., Women Changing the Job Market in Japan, THE JOURNAL OF COMMERCE (Sept. 13, 1983).

One female banking professional, Mitsuko Miyazawa, a 30-year-old bank teller, said that she was passed over for promotions twice in the past four years. "Working women in this country still want to reach for the stars, but we will have to learn how to settle for the moon. We need to find ways to use our talents and personalities in a manner that keeps Japanese society healthy and intact." Siwolop, *supra*, note 4.

¹⁹ Consulate General of Japan, JAPAN BULLITEN, NO. 16 (Feb. 13, 1987).

²⁰ Kamiya, *supra*, note 2.

²¹ Kamiya, *Id.* citing M. Amano, Deta Ni Miru Josei No Sengo 40 Nen (Women in the Past 40 Years Since the Second World War Based on Kata), Sekai 47 (August 1985).

See Kamiya for a discussion of seniority, continuity of employment and age concerning wage scales differences between men and women. There is a reluctance of Japanese management to promote women and raise salaries to equal levels of their male counterparts. The Japanese sometimes defend concerning the relative earning power of women in Japan compared to working women in other economies. For example, a woman working the Japanese retail sector does in fact tend to earn more than either a factory worker in Southern Europe or a plant manager in Southeast Asia. However, such comparisons of economies have little worth. Rarely does a woman working in the retail sector earn as much as men performing the same work. Furthermore, in order to promote women, there must be a demonstration of the woman's "considerable superiority" over the male counterpart. Cullison A.E., Women Changing the Job Market in Japan, THE JOURNAL OF COMMERCE (September 13, 1983).

²² Interesting statistics bear this out. For instance, in 1985, 1.6% of the House of Representatives were women, 7.6 of the House of Counsellors (the Upper House) were women, 3% of certified accountants and 4% of qualified lawyers were female. See footnote 26 in Kamiya, *supra* note 2 at 451.

²³ The Japan Institute of Women's employment was commissioned by the Labor Ministry. Of the 24.9% of women in managerial positions, 47% were from 40-49 years of age and 45% earned from

The result of this social phenomenon is further explained in some detail by Kamiya. A summary of her findings indicates that although the 1970s and 1980s have seen women emerging in fields that traditionally had been virtually closed to them, differences in the division of labor in Japan is still based on sex “and the conventional stereotyped roles of men and women,” with the economic outcome that “women are used in the labor market as a shock absorber, according to the demands of the economy” rather than as an important labor resource.²⁵ In addition, in a study by the Institute of Labor Administrative Research, 79.9% of the Japanese companies state they treat men and women equally concerning promotions. However, only 1.2% of these same companies have women in ranks above division managers. Furthermore, 65.7% of the 321 firms surveyed said they would continue to exclude female (but not male) employees from transfers away from home and 60% said they would continue the policy of exclusion.²⁶ In the field of education 60% of the public elementary school teachers are women but only 2.7% of them are principals at the elementary, junior or senior high school level.²⁷ The use of women as a “shock absorber” for both equal treatment and necessary promotion creates an economic environment whereby the use of women in the Japanese labor force is driven by factors other than the female population’s desire to enter the market. Based on the fact that women in Japan still desire to be a part of the labor force, and yet drop out to pursue traditional roles of child-bearing and rearing,²⁸ creates a plausible conclusion that women are in fact being kept out of the labor market through social and practical discriminatory practices within the society and the business community.

III. MOVEMENT TOWARD NEW ROLES

Although women in Japan’s labor market have not traditionally been used in the integral, systematic manner reflected in Western countries such as the United States, there was a general increase in the number of women in Japan’s labor market during the 1960s to the 1984 period. According to the Labor Force Survey of the management and Co-ordination Agency, this increase has occurred for two reasons.²⁹ First, by 1984, a total of 35.6 percent of the working force in Japan were women, averaging one out of every three workers. Although most women workers were found in the manufacturing sector, there has been a dramatic rise in the number of female workers in the retail trade and service sectors. In fact, two-thirds of the total number of women working in Japan are employed in the service and wholesale and retail trade sectors.³⁰ Although there has been a relative increase in women employed in professional fields, approximately one-third of the female workers are in clerical and related work, with 20 percent in crafts and production processes, and just 10 percent in professional and technical jobs.³¹ In the past five years, however, shortages of engineers, researchers and software specialists have encouraged many companies to fill their ranks with highly-trained female personnel.³²

7 million-10 million yen (\$45,800-65,400 at the time the poll was taken.) per year. Asahi News Service, Survey Finds Most Japanese Women Don’t Want To Be The Boss, THE GREENVILLE NEWS, p. 14D (May 20, 1990).

²⁴ The Virginia Slims Opinion Poll in Japan compared the belief, values and perceptions of U.S. and Japanese women. The survey indicated that while 70% of the Japanese women felt that women made greater personal sacrifices for their careers than men did. In the U.S., 80% of the women felt personal sacrifices were made for career obligations. Poll Says Japanese Women Don’t Want Men’s Social Status, THE GREENVILLE NEWS, p. 14A (Dec. 13, 1990).

²⁵ Kamiya, *supra* note 2 at 451.

²⁶ Sex Equality in Promotion Not Achieved Yet at Companies, THE JAPAN TIMES, No. 31, 389, p 12 (June 8, 1986).

²⁷ The survey was conducted by the Ministry of Education. 7.6% of vice-principals are women, which is two times the figure of three years ago. Asahi news Service, More Japanese Women Entering Teaching Profession, But Few Become Principals, THE GREENVILLE NEWS, p. 3B (Jan. 15, 1991).

²⁸ See *supra* note 4 and accompanying text.

²⁹ Akamatsu, R. (Former Director-General of Women’s Bureau), Tokyo Ministry of Labor, LEGISLATIVE SERIES JAPAN 1 (1985).

³⁰ *Id.*

³¹ *Id.* Between 1977 and 1987, the number of women employed in management positions of larger companies doubled. Women entering into business on their own have increased with 5 out of 6 new businesses in Japan being started by women. However, the increase is not substantial by American standards 154 THE WALL STREET JOURNAL, Col. 1, VII (September 11, 1989).

³² Look Whose Sun Is Rising Now: Career Women, BUSINESS WEEK (August 15, 1986).

Second, within the 1982 to 1984 period in Japan, more than eight million Japanese women have entered the workforce—a large number of whom are housewives.³³ Statistics, however, do vary. According to statistics in the Teikoku Data Bank, as of December 25, 1986, there were 28,437 female company presidents in Japan. This indicates a 2.4% increase over the past five years.³⁴ These statistics should not be taken out of context, however. The management and Coordination Agency also compiled statistics indicating 23 million working women in 1985, which represented 40% of the total number of workers in Japan. “Women, however, accounted for only 4% of the total number of (company) presidents.”³⁵ One study places numbers from statistical data in perspective. It shows that more than 66% of the women are employed on a regular basis. About 8% are considered temporary employees; the rest are part-time workers of which a vast majority (80%) are housewives. During his term, Yasuhiro Nakasone had announced that the number of the country’s housewives who work at various jobs - both full-time and part-time employment³⁶ is now 15.3 million. This is over half of the nation’s total housewife population of 30.1 million.³⁷

At first blush, it would appear that the statistical increase in female employees would create a presumption of more women in Japan’s workforce and that entry into the workforce is less restricted to women than it has been in the past. However, these statistics are deceiving. In fact, the increased number of women in the workforce does not represent career decision-making by women, but rather a decision to enter the workplace in lieu of their traditional roles in the home at various points in their lives. In 1984 only a little over 20% of women workers had been working for over ten years, although there is an increase in the number of women who were staying in their jobs with long-term employment expectations (that is, the working without retiring after marriage or childbirth) and under “reemployment concepts (that is, returning after a temporary retirement to care for a newborn).³⁸ The reasons for the stated increase in the number of women workers parallels the U.S. in the 1950s, which is indicative that Japan is modernizing its approach concerning its labor resource in women. It should be noted, however, that the 1984 numbers in Japan are 34 years behind the same statistic in the U.S.

The reasons for the increased use of women are due to: part-time work; changes in the structure of industry in Japan; introduction of numerous technological factors that increase the ease and convenience for traditional household chores and the lessening of child-rearing responsibilities that in turn allow for more time to work; the need or desire for a second income; and an increased interest in the enhanced social interaction that the workplace affords.³⁹

Not only are women in the minority in the workplace, but women do not play a significant role in corporations and the Japanese government. In 2018, women were only 11.2% of directors and 18.3% of section chiefs in the private corporate world.⁴⁰

Moreover in 2019, there were only 5.2% of Japanese women as board directors in Japanese companies.⁴¹ It is noteworthy that out of a total of 192 countries, Japan is ranked 167th in women’s representation in government.

³³ Siwolop, *supra* note 4.

³⁴ JAPAN BULLITEN, *supra* note 12 at p. 6.

³⁵ *Id.*

³⁶ To categorize many women as “part-time” is deceiving. Some surveys have shown that the average number of hours that those “part-time” workers work is 34 hours per week or very little less. The result is that the financial contributions of the part-time working women to their household incomes are expanding. Cullison, *supra* note 14 at 1.

³⁷ *Id.*

³⁸ Akamatsu, *supra* note 22 at 2.

³⁹ Cullison, *supra* note 14 at 2. A rapid rise in land prices and increased burdens of mortgages, along with a shortage of labor in companies, have created incentives for hiring women, especially in the retail, banking, and services industries. See WALL STREET JOURNAL, *supra* note 24.

⁴⁰ Cabinet of Japan, Cabinet Office, Women and Men in Japan 2020, Measures for Gender Equality: The Fourth Basic Plan for Gender Equality, GENDER EQUALITY BUREAU (2020).

⁴¹ Cabinet of Japan, Cabinet Office, Appointment of Women to Board Positions Gender Equality Bureau, Measures for Gender Equality: Appointment of Women to Board Positions, GENDER EQUITY BUREAU: WOMEN AND MEN IN JAPAN (2020).

Only 9.9 % of the members in the lower house and a mere 22.9% of the members in the upper house of Japan's National Parliament are women⁴² Furthermore, only two women serve as cabinet ministers in the Japanese government as of September 2020.⁴³

IV. THE DISCRIMINATORY ENVIRONMENT AND THE ROLE OF THE LEGAL SYSTEM

Despite increased levels of employment, the manner in which women have been treated in the labor market has and continues to be discriminatory in nature. The societal and cultural roles and expectations of women in Japan set the stage for discriminatory treatment. Unlike U.S. laws, which play an important role in fighting discrimination, the laws and the legal system of Japan are not viewed as optimal tools for creating or maintaining equality between the sexes in Japan. A view of the general discriminatory environment, and of the role of the law in Japan, is helpful in gaining an understanding of this phenomenon.

The underlying culture and philosophy in Japan create a complicated environment where discrimination may be allowed to flourish. This, in turn, may inhibit the implementation of laws, such as the Equal Employment Opportunity Law, which would otherwise work to abolish discrimination in the workplace. In relating any law to the cultural environment in which discrimination takes place, it is necessary to look at the general attitude of the Japanese about themselves. This attitude includes strict delineations between Japanese and non-Japanese, and between Japanese men and women.

Policies can also play a major role in determining the treatment of employees. Obvious examples are the minimum wage and statutory limits on working hours. The fact that women continue to earn low wages despite worsening labor shortages in the industries where work demonstrates that the market is not functioning as it should. We need to make these jobs sufficiently rewarding It's time we had a conversation about the policies need to secure the labor our society depends on. That should be a key component of our efforts to promote the advancement of women. These delineations may exist with or without the existence of laws.⁴⁴

Japan has traditionally viewed itself as a homogeneous and mono-ethnic culture, which leads to a discriminatory attitude concerning non-Japanese. Leading Japan into this attitude was the isolation policy of the country that lasted for centuries. It ended "in the context of history" only a short while ago.⁴⁵ The period of marked isolation occurred during the Tokugawa Period after the Rebellion at Simabar, Nagasaki Prefecture, also known as the Christian Rebellion of 1639. The Tokugawa Shogunate banned Christian beliefs, and as an official policy, isolated Japan for a period of 230 years until the Meiji Restoration in 1868 when Japan opened its door to Perry's "Black Ships." This historical event, however, is not always viewed by scholars as making a true end to Japan's isolationist attitude. According to one leading Japanese scholar:

For centuries, the Japanese have lived in an exclusive, closed world Ours is a history against history, a chronicle of our assiduous effort to preserve and maintain almost intact the microcosm called "Japan."⁴⁶

The 1635 Edicts of the Tokugawa Shogunate addressed to the Joint Bugyo of Nagasaki ordered the Closing of Japan from the outside world. Part of these edicts included:

1. Japanese ships are strictly forbidden to leave for foreign countries.

⁴² Inter-Parliamentary Union, Percentage of Women in National Parliaments [Data set], IPU PARLINE: GLOBAL DATE ON NATIONAL PARLIAMENTS (October 1, 2020).

⁴³ Rich, M, Japan's New Leader Picks His Team: Familiar Men, and Fewer Women, THE NEW YORK TIMES (September 16, 2020).

⁴⁴ Wakana, Shuto, The Failed Promise of Workplace Equality in Japan: A View from the Trenches, SOCIETY ECONOMY WORK (Jan 14, 2021). Shuto Wakana is a Professor of Economics at Rikkyo University, specializing in labor relations and women's labor.

⁴⁵ *Supra*, note 40.

⁴⁶ Lu, David J. ed., FROM JAPAN: A DOCUMENTARY HISTORY: THE DAWN OF HISTORY TO THE LATE TOKUGAWA PERIOD (Armonk, New York, 1997), 221-222. (© 2001). Sharpe, M.E., Reproduced with the permission of the publisher.

2. No Japanese is permitted to go abroad. If there is anyone who attempts to do so secretly, he must be executed. The ship so involved must be impounded and its owner arrested, and the matter must be reported to the higher authority.

3. If any Japanese returns from overseas after residing there, he must be put to death.

4. If there is any place where the teachings of padres (Christianity) are practiced, the two of you must order a thorough investigation.⁴⁷

Indications of the attitude of isolationism and the positive attributes of a mono-ethnic society remain in the cultural system, which in turn are reflected in the Japanese legal system. For instance, in Article 1 of the Constitution of Japan, the “old” Japan has been maintained in the preservation of the status of the Emperor and the recognition of his importance as a symbol of the Japanese people and their cultural unity and perhaps even their mono-ethnicity.⁴⁸

The attitude toward mono-ethnicity has a tendency to lead to discriminatory attitudes and practices. As an example, the remarks by former Prime Minister Nakasone concerning the “intelligence level” of Japanese people versus those in America based on the number of minorities, especially Blacks, depicted Japan’s mono-ethnic attitude. The most notable part of the comment was that it went unnoticed by Japan’s Liberal-Democratic audience, whom the Prime Minister was addressing, and the Japanese media as well. It was the foreign press that responded immediately toward the discriminatory significance of the comment, which eventually drew negative attention from around the world. The fact that there was a foreign rather than a domestic reaction to Nakasone’s comments speaks to a perhaps naivete or insensitivity on the part of the Japanese concerning the importance and participation of minorities in many non-Japanese societies, such as the United States. According to Mr. Mizuno who has studied the Japanese attitude toward mono-ethnicity:

Most Japanese, no less than Nakasone, consider Japan a mono-ethnic country and take pride in that belief. It was only as the repercussions from Nakasone’s statement spread that the Japanese were reminded that there was a crack in their mono-ethnicity, a minority right here in Japan - the Ainu.⁴⁹

This approach to ethnicity spills over in other areas besides a delineation between that which is Japanese and non-Japanese. The concept of “Japanese” is often sex-oriented, placing primary importance on the males in the society. In relation to Japanese industry and management styles, the organizational concept gives little credence to an individual but rather looks at the importance of the organization over the individual’s rights. Therefore, the female’s rights are not always considered of primary importance. This lack of importance of the individual - male or female - allows any discrimination against one class of individual, such as the female. For example, during the Shinto ritual at a tunnel construction site or at many other engineering sites, no women could be present.⁵⁰ Customs go unchallenged as a tradition based on religious philosophy to satisfy a societal tradition. Therefore, the act is viewed as a cultural reality rather than a discriminatory act.

⁴⁷ Id.

⁴⁸ Art. 1, CONSTITUTION OF JAPAN. See discussion in Matsubara, Id.

⁴⁹ The Ainu (meaning literally *person* in the Ainu language) is comprised of a small native Indigenous population that are now almost entirely in the northern region of Japan and have been there for centuries. Mizuno, Takaaki, Ainu: The Invisible Minority, 34 JAPAN QUARTERLY 143 (April-June, 1987). Although in 1980 the Japanese government reported to the United Nations concerning the International Covenant on Civil and Political Rights that “minorities of the kind mentioned in the Covenant do not exist in Japan.” This is far from the truth. Id. 145-46.

⁵⁰ Masubara, *supra note* 33 at 19.

Outside this mono-ethnic attitude, there are differences between Japanese men and women that are maintained. Men traditionally work and women traditionally stay home. Classified ads divide information by “male” and “female,” a practice that would clearly violate U.S. law. High managerial and executive positions in major Japanese companies rarely include women.⁵¹ Although increases in the number of female executives is on the rise,⁵² however, one study has indicated that “male-dominated economic organizations have been slow to accept female workers.”⁵³ Further, in a study conducted in 1986, 40% of the 2,080 males in a university seniors group indicated that “they would feel uncomfortable if they worked for a female executive.” Interestingly, only 27% of the women polled said they “would be happy to work for other women.”⁵⁴

Further evidence of the society’s reticence to acknowledge the concept of equality was provided by the great length of time required for the ratification of the United Nation’s 1979 General Convention On The Elimination Of all Forms Of Discrimination Against Women by Japan’s General Assembly.⁵⁵ The U.N. proclamation took five years to be ratified in Japan due to the reluctance of the government and industry.⁵⁶ Its ratification, however, illustrates that traditional attitudes in Japan are beginning to slowly break down.⁵⁷

V. THE ROLE OF THE LEGAL SYSTEM

The law and the legal system of Japan have not provided much assistance in reducing discrimination in the country. If Japan would have a democracy that would create a representation of women, this would go a long way toward the female specific issues such as sexual harassment. Furthermore, if Japan would provide a childcare provision in its laws this would create a more equal representation of women in the workplace⁵⁸. If businesses in Japan would create policies that would ease the burden of the concerns for childcare for women, this would assist women in participating more fully in the workforce. Policies could include early career management training for women and financial support for women to take advantage of childcare programs. All of this could then increase a more positive trend of women in Japan participating in leading roles in businesses.⁵⁹

Unfortunately, the Japanese government has not been seen to create gender-equality policies. If the government would include policies and laws such as gender quotas in hiring, this would go a long way of alleviating the discriminatory environment of women in the country. In 2010 the government indeed drafted a plan for gender equality; however, any proposals remain dormant. Moreover, it remains important for Japan’s future that the government support the role of Japanese women as leaders and influencers.⁶⁰

⁵¹ *Id.*

⁵² See note 27 and accompanying text.

⁵³ JAPAN BULLETIN, *supra* note 12 at 7. Changes, however, have occurred. The Japan Committee For Economic Development (Keizai Doyu Kai) has, for the first time since 1986, allowed women to join its organization. The result has been 13 female presidents and executives of companies joining as committee members. *Id.*

⁵⁴ *Id.*

⁵⁵ Art. 2, UNITED NATIONS CONVENTION.

⁵⁶ It in fact was not ratified until September 3, 1985. Matsubara, *supra* note 33 at 19.

⁵⁷ The reluctance of the approval of this Convention may be explained differently, however, when viewed from a Japanese cultural perspective. In Japan, people of honor resolve their differences and difficulties among themselves, instead of relying on an “outside” neutral body, such as the U.N to impose certain values upon the parties’ beliefs and actions. In this way, the U.N. convention may have been seen as a interfering mechanism that robbed the Japanese people of dealing with their own personal issues within the honorable confines of Japanese societal decision-making. (Author’s interpretation and theory based on living in Japan.)

⁵⁸ Arnold-Parra, Samuel, Japan’s Glass Ceiling: Obstacles of Women’s Participation In the Workplace, GLOBAL RISKS INSIGHTS (March 22, 2021). <https://search.creativecommons.org/photos/2f317fed-c3bd-4c88-8ab2-b3e972d9d766>.

⁵⁹ *Supra* at 4.

⁶⁰ *Supra* at 57.

VI. HOW THE ECONOMY CAN BE ENHANCED THROUGH THE INCREASE OF WOMEN IN THE WORKFORCE

There is a correlation between the use of women in Japan's work force that follows a simple logic: If there are increases in working women in the workplace, this in turn creates more growth in industries. This is especially true in the rapidly aging societies. The participation of women alleviates the effect of a shrinking labor force. Furthermore, an economy that is more inclusive will create ripple effects, through the expansion of the talent pool, which in turn forms a more skillful workforce. The ultimate result would be to place more money in women's hands to add to personal or family income. For Japan, there is an ultimate hope that the women of that society will no longer have to choose between remaining single in order to pursue a career among the male members of the society or giving up a career in order to have a family.⁶¹

VII. CONCLUSION

The Japanese economy has traditionally been reticent about the open inclusion of women in its workforce. The reasons for this are the traditional gender roles and the attitude of mono-ethnicity in the Japanese society, which in turn creates a discriminatory effect on women of the society. As a result, the movement toward changes in those gender-oriented roles has been slow to advance. In addition, the laws and policies of the government have not changed this discriminatory effect. The unfortunate result is that Japan has failed to increase and enhance its economy due to a lack of increase in women in the workforce. All of this has resulted in a failure of Japan to live up to its economic full potential.

⁶¹ Larmer, Brook, [Why Does Japan Make It Hard for Working Women to Succeed](#), SUNDAY MAGAZINE at 18 (Oct. 21, 2018).