### JAPANESE LEGAL SYSTEM PART II DAY 4 (JUNE 8, 2018)

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### DAY 4

- 1. Quick reference for finding Japanese Law
- 2. Family Law from Gender Perspective
- 3. Japanese Law from Gender Perspective

#### FINDING JAPANESE LAW: USEFUL REFERENCE

- Japanese Law Translation:
   <a href="http://www.japaneselawtranslation.go.jp/">http://www.japaneselawtranslation.go.jp/</a>
- Supreme Court of Japan<a href="http://www.courts.go.jp/english/">http://www.courts.go.jp/english/</a>
- Waseda Institute of Comparative Law
- https://www.waseda.jp/folaw/icl/en/
- University of Washington Library
   <a href="http://guides.lib.uw.edu/law/eald/japan-az">http://guides.lib.uw.edu/law/eald/japan-az</a>
- o E-Gov. websites: <a href="http://www.e-gov.go.jp/en/index.html">http://www.e-gov.go.jp/en/index.html</a>

# Brief History of Family Law in Japan

#### **INTRODUCTION**

- As already discussed, Japan is a unique modern state in that its national law obliges a married couple to have a single surname, even now in 2018.
- > Typically, it is the wife—96% in 2015—who gives up her original surname and changes it in the family registry.
- ➤ On December 16, 2015, the Supreme Court Grand Bench heard the first constitutional case on whether this single surname rule for married couples violated Constitution. → The majority, all male, ruled that the law was constitutional.
- Why does Japan has such a rule? What's the problem of keeping this rule?

### HISTORICAL BACKGROUND: STARTING MEIJI ERA

- ORight after Meiji Restoration (1868), the Meiji Government adopted *Shinritsu Koryo* (new criminal code) in 1870. Under this law, both wife and mistress (*mekake* 妾) were admitted as spouses of the husband. But the child of wife is provided as the first-degree relative whereas the child of mistress is provided as the third-degree relative.
- Upon legislation of the old criminal code in 1881, the official system of mistress was abolished.

### Modernization after the Meiji Restoration (1)

- In 1889, Meiji Constitution was promulgated. Under this Constitution, the civil rights (right to vote, freedom of association, etc.) were not granted to women.
- While around 1920s, political campaign calling for female participation for politics became active, it was only after WWII that Japanese women were actually allowed to vote.
- → Modernization of Japan started with the legal and systematic subordination of women to men.

### Modernization after the Meiji Restoration (2)

- o In 1898, Meiji Civil Code was promulgated. Under this law, there were two schemes to restrict women's life.
  - ◆ "Ie" system: "Ko-shu" (householder) was the leader of the family, reflecting the patriarchal idea. The household decided marriage and the place of living of family. In general, Ko-shu was a man, and the status of Ko-shu was succeeded by the eldest son who was a legitimate child.
  - ◆ "Fu-ken" (rights of husband) under the provisions on family law: Once a woman is married, she becomes incompetent to do certain legal acts such as disposition of properties.
  - → Mission of women was to have a son and bring him up.

### Modernization after the Meiji Restoration (3)

- Back before *Meiji*, surname was only for the privileged people "*Samurai*" class only.
- To strengthen the authority of central government, especially for the military draft, all citizens were forced to adopt a surname in 1875.

### Article 746 (2) of Meiji Civil Code in 1898

- "The head and all members of the household use the surname of its family."
- →Surname as the umbrella term for all household members.

### Modernization after the Meiji Restoration (4)

- o Meiji criminal law also treated women discriminately in adultery (criminal conversation姦通罪):
  - "If a married woman commits adultery, she will be subject to imprisonment for less than 2 years. The man who has affair with the married woman will be subject to the same punishment only when the husband makes an accusation." (Art.183 of the old Criminal Code)
- "Married men" were not subject to criminal conversation (except when having the relationship with a married woman and the husband makes an accusation.)

### Modernization after the Meiji Restoration (5)

• Even the oldest Attorney Law (law of lawyers) allowed only men to take the bar exam.



At the first stage of modernization, Japanese society severely discriminated women. Needless to say, there was no concept as "Gender Equality" in Meiji era.

### THE END OF WORLD WAR II AND ADOPTION OF THE NEW CONSTITUTION

• After the WWII, the Constitution of Japan adopted. There are important provisions here:

Article 13. All of the people shall be respected as individuals. ...

Article 14. All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.

# The End of World War II and Adoption of the New Constitution (2)

Article 24. Marriage shall be <u>based only on the</u> mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis.

Constitution of Japan guarantees protection of fundamental human rights, equality under law, as well as equality of men and women.

## The End of World War II and Adoption of the New Constitution (3)

- Due to incompatibleness, *Koshu* system was abolished.
- HOWEVER, the family registry system (*Koseki*) survived. A legally married couple establishes a new family registry. They are required to have **the same** family name.

### Article 750 of the Civil Code (Act. No.80 of 1947)

A husband and wife shall adopt either the husband's or wife's surname in accordance with what is decided at the time of marriage.

### Family Registry Act of 1947

### **Article 6**

A family register shall be created for each unit consisting of a husband and wife, and any children thereof with the same surname.

- → A married couple with their unmarried children is the family unit, and all members must have the same surname (the principle of the same surname within the same family registry).
- →Embedded in various social systems including pension, tax system, public housing, social security, and voting system. 「世帯 (setai, household)」

## Amendment of and Deliberation on the Single Surname Rule

- To improve the status of wives after the designation of the UN Decade for Women in 1975, the 1976 amendment of Civil Code allowed them to use their surname at the time of divorce by submitting a notification within three months of the divorce (Art.767(2)).
- → Practical inequality discussed, but did not change the principle that a person's surname must revert upon divorce.

# Deliberation at the Legislative Council of the Ministry of Justice in 1990s

- Started a Study for Amendment of the Whole Marriage and Divorce System in 1991.
- Its subcommittee published an interim report in 1992 that raised the issue of whether the current law should be retained or amended so that married couples could have different surnames.
- ➤ The Council submitted "Proposal to Amend a Part of the Civil Code" to the Minister of Justice in 1996.

### Proposal to Amend a Part of the Civil Code

As to Article 750, the proposal included:

- 1. A married couple should be able to choose to either share a single surname or keep different surnames, and
- 2. If the couple decided to retain their own surnames, they should agree at the time of their marriage which surname should be used for their children.

Reasons for this proposal: (1) people's values had diversified, and many people wished keep different surnames upon marriage; (2) the law should protect a person's right over their own surname; and (3) many foreign countries allowed married couples to keep different surnames without violating the essential value of the spousal and parent–child relationship.

### The proposal shelved for almost 20 years.

Generally, when the Legislative Council of the Ministry of Justice published a proposal for the bill, it goes to legislative process.

The proposal regarding Art.750 has been shelved for more than 20 years.

When the Democratic Party won the election to become the ruling party in 2009, despite proposing legislation on the selective surname system for married couples in its manifesto, it was unable to submit the bill during its time in government.

### FIVE DISSENTING OPINIONS FOR 2015 SUPREME COURT DECISION

- > Five of the justices gave dissenting opinions. Three—Justices Okabe, Sakurai, and Onimaru—were women who pointed out that the value of the surname for a family unit did not justify excluding all exceptions, especially in contemporary diverse society, and that Article 750 of the Civil Code was unconstitutional considering the current situation in which women were forced to change their surnames.
- > Justice Kiuchi also dissented, arguing that Article 750 of the Civil Code violated individual dignity and essential equality of both sexes as guaranteed by Article 24 of the Constitution.
- > Justice Yamaura was the only one to argue that the government's failure to amend Article 750 of the Civil Code since 1996 constituted an illegality, and thus the government should offer compensation under the State Redress Act.

Discussion: Should the Family Regime Supersedes Individual Dignity in Japan?

#### FACTS AND UNCLEAR LOGIC

- ➤ It is the wife in 96% of married couples who had to change her surname upon marriage.
- ➤ Using a premarital surname as a by-name is not permitted on a bank account, driver's license, medical insurance, professional license certificate, and so on.
- ➤ The Supreme Court also declared that a surname and an individual name are different: the former possessing legal institutional value and the latter forming a personal right.
- ➤ Why did the Supreme Court issue such a ruling?

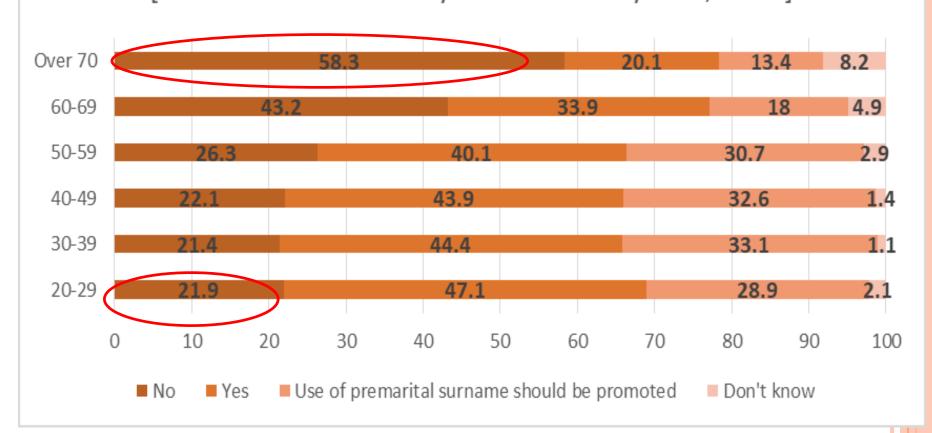
### IE REGIME 家制度 SURVIVES EVEN TODAY

- > Japanese family law was not yet free of the *ie* system. Once the Meiji Civil Code was adopted, a wife was allowed to use her husband's surname and become part of her husband's family unit.
- Even after the current Civil Code was adopted after WWII, people's mindset still did not change, and thus 96% of married couples used the husband's surname.
- The value of family, which to a great extent supports gender discrimination, is still entrenched in society: when the husband changes his surname upon marriage, people ask, "What's happened?"

#### SIGN OF CHANGE?

Figure 1: Do you support the amendment of Article 750 for a selective surname system?

[Source: National Survey on Surname System, 2012]





### MORE ABOUT FAMILY REGISTRY: IS IT SO CLEAR???

Three Elements		
Sex of body	$\mathbf{M}$	Decided by six elements (sex chromosomes, sexual gland, sex hormone, internal sex organ, external sex organ, and brain
Sexual identity		How to identify own gender.
Sexual orientation		Sexual desire is oriented to same sex or opposite sex.

### **SEXUAL MAJORITY**

Three elements		
Sex of body	$egin{array}{cccccccccccccccccccccccccccccccccccc$	Easily classified either man/woman. ⇔Intersex
Sexual identity		Physical sex and sexual identity are the same. $\Leftrightarrow$ So-called "Gender identity disorder"
Sexual orientation		Heterosexism ↔ Homosexual

- In case of Japan, ALL citizens are required to register either male or female in the family registry.
- It is estimated that there are about 60,000 Japanese who are intersex, but there is no category for them.

### TOO STRICT REQUIREMENTS TO CHANGE YOUR GENDER IN FAMILY REGISTRY

- 1. Over 20
- 2. NOT Married, no minor child.
- 3. Medical prescription
- 4. Remove reproductive ability
- 5. Create a similar appearance with the gender you want to change.

#### **INTRODUCTION: WHAT'S THESE NUMBERS?**

- o 94 out of 721 (13.1%) (as of 2015) 163th in the World
  - **→** Number of female Diet members
- o 705 out of 2,755 (25.6%) (as of April 2016)
  - **→** Number of female judges
- 441 out of 1,930 (22.9%) (as of March 2016)
  - **→** Number of female prosecutors
- o 6,895 out of 37,680 (18.3%) (as of March2016)
  - **→** Number of female attorneys
- **o** 73 %
  - → Comparison of average monthly income of male and female employees (i.e., female employees receive 73% income of male employees)

### AFTER THE WWII BEFORE 1985

- While the Labor Standard Act of 1947 provides "Principle of Equal Wages for Men and Women" (art.4), the act did not tell anything about retirement age. In 1981, Nissan Motor Co. Case, the Supreme Court clearly stated the retirement system which provided different retirement age for men and women was invalid under Art.90 of the Civil Code (public order and morality).
- Mandatory Retirement upon Marriage for Female Employees became ineffective.

Ratification of CEDAW as an Accelerator to Promote Gender Equality

# CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

- Adopted by the UN General Assembly in 1979.
- o "Article 2 States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: ...(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;"

### DOMESTIC IMPLEMENTATION OF THE CEDAW IN JAPAN

Japan ratified the CEDAW in 1985 without reservations. As a state party to CEDAW, Japan is legally obliged to "condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake ... (f) to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise" (CEDAW, 1979, art. 2, emphasis added). Namely, the Convention obliges state parties to eliminate discrimination against women not only by public agencies but also by private individuals, such as corporate employers.

### DOMESTIC IMPLEMENTATION OF THE CEDAW IN JAPAN(2)

- In order to implement CEDAW domestically, the Japanese government took various measures.
- o In 1985, the government enacted the Equal Employment Opportunity Act (EEOA) (*Koyō no bun'ya ni okeru danjo no kintō na kikai oyobi taigū no kakuhotō ni kansuru hōritsu*) to remedy the discrimination against women in private employment. This Act was the **first Japanese law** to prohibit sexual discrimination in private employment.

### FRAMEWORK UNDER EOEA

- EEOA allowed women to compete with men for career track positions with opportunities for promotion. EEOA also prohibited employers from posting help-wanted advertisements segregated into male and female categories, except when such advertisements did not limit the employment opportunities of women.
- However, EEOA was not so effective in remedying workplace discrimination against women in reality for the following reasons:
- (1) EEOA did not provide any sanctions and relied on employers' voluntary efforts;
- different treatment of men and women in employment such as "women only" was not prohibited on the ground that it did not limit the employment opportunity of women; and
- (3) an employer's consent was required to initiate mediation to solve labor disputes under the scheme of EEOA.

#### **REVISION OF EOEA IN 1997**

- Later, in 1997, EEOA was largely reformed to strengthen prohibitions on discrimination against women mainly by making the following revisions:
- (1) different treatment of women itself became illegal discrimination;
- equal treatment of women and men in employment and promotion became mandatory as opposed to voluntary;
- (3) employees were given the ability to initiate labor dispute mediation under the scheme of EEOA without consent of the employer;
- the government had the power to disclose the names of vicious employers as a sanction;
- the government began supporting employers who adopted positive actions to improve the status of women; and
- (6) the revised EEOA imposed a new obligation on employers to pay due consideration to prevent sexual harassment at the workplace.

### ENACTMENT OF THE CHILDCARE LEAVE ACT IN 1991

- In 1991, the government enacted the Child Care Leave Act (*Ikuji kyūgyōtō ni kansuru hōritsu*), triggered by the so-called "1.57 shock" the average birthrate in Japan reported in 1990.
- This Act granted employees who had a child under one year old the legal right to take childcare leave. It also obliged employers to take necessary measures to enable their employees to take care of their children without leaving the workplace, such as a system of shorter working hours.
- The Act was reformed and renamed the Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave (*Ikuji kyūgyō*, *kaigo kyūgyōtō ikuji mataha kazokukaigo o okonau rōdōsha no fukushi ni kansuru hōritsu*) in 1995 to grant employees the right to take leave when the employee has to take care of one of his or her family members (not necessarily a child under one year old).

### CEDAW AS STRONG ACCELERATOR OF DOMESTIC GENDER EQUALITY

- The government adopted the "New National Action Plan for the Year 2000" (*seireki 2000 nen ni mukete no shin kokunai kōdō keikaku*) in 1987 for the first time and revised it in 1991, aiming to achieve a "gender-equal society."
- In the next year of 1992, the government appointed a Minister of Women Problems (*fujin mondai tantō daijin*) for the first time, and the Office for Gender Equality and the Headquarters for the Promotion of Gender Equality were established in 1994.
- o In 1997, the Council for Gender Equality was legally established in the General Administration Office of the Cabinet and, based on its deliberations, the Basic Act for Gender-Equal Society (*danjo kyōdō sankaku kihonhō*) (hereinafter Basic Act) was finally enacted in 1999.

### CONCLUDING OBSERVATIONS OF THE CEDAW ON THE $6^{TH}$ PERIODIC REPORT OF JAPAN (AUGUST 2009)

#### Temporary special measures

- 27. The Committee notes with regret that no temporary special measures are in place to accelerate de facto equality between men and women or to improve the enjoyment by women of their rights in the State party, in particular with regard to women in the workplace and the participation of women in political and public life.
- 28. The Committee urges the State party to adopt ... article 4 of the Convention and the Committee's general recommendation No. 25, temporary special measures, with an emphasis on the areas of employment of women and participation of women in political and public life, including women in academia, and with numerical goals and timetables to increase representation of women in decision-making positions at all levels.

# CONCLUDING OBSERVATIONS OF THE CEDAW ON THE 6<sup>TH</sup> PERIODIC REPORT OF JAPAN (AUGUST 2009)(2)

Follow-up to concluding observations

59. The Committee requests the State party to provide, within two years, detailed written information on the implementation of the recommendations contained in paragraphs 18 and 28 above.



#### OVERVIEW OF THE BASIC ACT

- Upon deliberation at the Council for Gender Equality, the Basic Act for Gender-Equal Society was finally enacted in 1999.
- The Basic Act is a "basic law ( $kihon\ h\bar{o}$ )" to declare the basic policy to promote a gender-equal society. Article 1 provides the purpose of this Act as follows:

In consideration of the urgency of realizing an affluent and dynamic society in which the human rights of both women and men are respected and which can respond to changes in socioeconomic circumstances, the purpose of this law is to comprehensively and systematically promote formation of a Gender-equal Society by laying out the basic principles in regard to formation of such a society, clarifying the responsibilities of the State and local governments and citizens, and also stipulating provisions to form the basis of policies related to promotion of formation of a Gender-equal Society. This type of laws regulates the major important fields of national policy. Its characteristic is that these laws are recognized as merely a program of the policy and thereafter several independent laws are issued in order to implement the policy showed in the basic law.

### OVERVIEW OF THE BASIC ACT (2)

(Organization of the Act)

The Preamble

**Chapter 1 General Provisions (Articles 1-12)** 

Chapter 2 Basic Policies Related to Promotion of Formation of a Gender-Equal Society (Articles 13-20)

**Chapter 3 The Council for Gender Equality** (Articles 21-26)

**Supplementary Provisions** 

#### OVERVIEW OF THE BASIC ACT (3)

- The Basic Act stipulates five basic principles in building a gender-equal society (Articles 3-7):
- (1) respect for human rights of men and women;
- (2) due consideration for gender neutrality in the social system and customs;
- (3) equal participation of men and women in policy making and political decisions;
- (4) balancing of family life and other activities; and (5) international cooperation.

#### OVERVIEW OF THE BASIC ACT (3)

- From the review of the legislative and administrative activity from 1985 to 1999 stated above, enactment of the Basic Act was one substantial achievement for realizing a gender-equal society, which Japan undertook to achieve by ratifying CEDAW.
- The fifth principle of the Basic Act international cooperation means that formation of a gender-equal society in Japan should be promoted in a harmonized manner with international efforts including CEDAW. Article 19 of the Basic Act also states:
  - "to promote formation of a Gender-equal Society based on international cooperation, the State shall make efforts to take necessary measures for exchanges of information with foreign governments and international institutions, and the smooth promotion of international mutual cooperation related to formation of a Gender-equal Society."
- Accordingly, the Basic Act strengthens a concrete legal ground for the government to take necessary measures to implement various policies to comply with CEDAW.

#### **CURRENT FRAMEWORK**

- In 2000, the government approved by Cabinet decision the "Basic Plan for Gender Equality" (*danjyo kyōdō sankaku kihon keikaku*) (hereinafter "Basic Plan") (Gender Equality Room, 2000), the first plan based on the Basic Act.
- The Basic Plan is composed of three parts:

Part 1 states basic principles in promoting a genderequal society

Part 2 states basic policy directions and concrete policies to be implemented, and

Part 3 explains how to execute the Basic Plan.

#### CURRENT FRAMEWORK (2)

- The Basic Plan proposes four concrete policies to promote gender equality in the area of employment:
- (1) promotion of policies to secure equal opportunities and treatment of men and women in the area of employment;
- (2) promotion of policies for health management of mothers;
- (3) support women so that they can manifest their aptitude; and
- (4) adjustment of labor environments reflecting various working styles.

#### CURRENT FRAMEWORK (3)

• Up to December 2017, the Basic Plan has been revised three times. The Fourth Basic Plan, approved on December 25, 2017. The Plan includes concrete target numbers:

http://www.gender.go.jp/about\_danjo/seika\_shihyo/pdf/numerical\_targets\_2017.pdf



#### **SOME WORDS IN FASHION**

- o "Work-life balance": On December 18, 2007, a Council of Executives of Public and Private Sectors to Promote Work-life Balance, consisting of representatives from related ministries, economic circles, labour circles, and local governments, formulated a "Charter for Work-life Balance" and an "Action Policy for Promoting Work-life Balance" (revised in June 2010), and efforts are now being made by the public and private sectors working together.
- o "Iku men": ???



Seems that the issue is going to be shifted to "ONLY women's problem" to both men and women's problem.

### GAP BETWEEN THE PRINCIPLE AND THE REALITY: PRINCIPLE UNDER THE GLOBAL SOCIETY

- "Female participation in decision-making at workplace raises productivity of corporations."
   (Government leaflet)
- "Those corporations that have diversity in workplace can survive global competition this century." (Gender Equality NGO official)



Seems that globalization will promote gender equality even though it may be a tool to survive global competition.

### GAP BETWEEN THE PRINCIPLE AND THE REALITY: REALITY

- Although women make up 40% of the Japanese workforce, according to a 2016 government survey, 6.5% of department managers, 8.9% of section managers, and 14.7% of sub-section chiefs are women.
- 40% of female full-time workers leave their workplaces after their first childbirth. (According to a government survey, almost 80% of them answered that "wanted to continue to work, but couldn't.")
- The Global Gender Gap Report 2017 ranked Japan 114<sup>th</sup> out of 144 states.

#### AND "THESE NUMBERS"

- o 94 out of 721 (13.1%) (as of 2015) 163th in the World
  - **→** Number of female Diet members
- o 705 out of 2,755 (25.6%) (as of April 2016)
  - **→** Number of female judges
- 441 out of 1,930 (22.9%) (as of March 2016)
  - **→** Number of female prosecutors
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  - **→** Number of female attorneys
- **o** 73 %
  - → Comparison of average monthly income of male and female employees (i.e., female employees receive 73% income of male employees)

# GAP BETWEEN THE PRINCIPLE AND THE REALITY: REALITY (3)

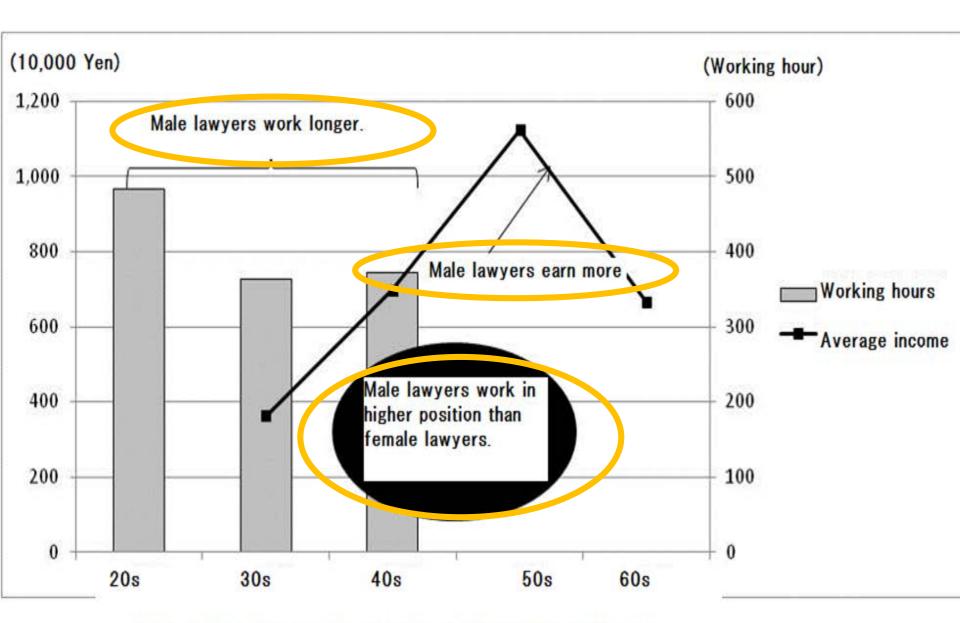
http://headlines.yahoo.co.jp/videonews/jnn?a=20130228-0000056-jnn-soci

(Mothers who were rejected their application to day-care center for their babies filed a petition of objection. In this community 1178 (about ¼) applications were rejected due to over capacity of day-care center. This issue is called "waiting-baby problem" and very serious especially in urban area of Japan.)

• Why "mothers" not fathers protesting for day-care center?

# GAP BETWEEN THE PRINCIPLE AND THE REALITY: REALITY (2)

- Even among the legal profession, there is clear income differences in between male lawyers and female lawyers:
  - Male lawyers: 15,519,200 Yen
  - Female lawyers: 9,894,400 Yen (JFBA survey in 2010)
  - Ratio of associates: Male 20.7%, Female 44.1%



[Figure 2] Gender gap of working hour, job position, and income

#### HYPOTHESIS FROM THE ECONOMIC BASIS

• The gender gap is developed through accumulation of many layered glass ceilings for female lawyers.

Difficulty continues by around 40s

Age 30s: Family obligation

Treated differently from the entry

Treated differently by both, colleagues, and clients?





• What's the problem of unequal gender distribution in the legal profession???

# SOME EXAMPLES ABOUT GENDER BIAS IN THE JUDICIARY (1)

[The wife was suffered by the husband's DV for more than 30 years, so finally she filed divorce litigation. ]

"I cannot stop feeling sorry for the husband who has established his own carrier, watching the proceedings in the corner of the court room. ... Now there is a circumstances that makes both parties difficult to continue marital relationship, but the husband still opposes to divorce. ... Now the husband should have the last opportunity ... both parties should face each other seriously and patiently continue discussion so that both the husband and the wife can find "The Blue Bird" that they could have never found so far. Accordingly, the court dismiss the action for divorce." 名古屋地岡崎支判平成3·92 20判時1409号97頁(通称「青い鳥判決」)

### SOME EXAMPLES ABOUT GENDER BIAS IN THE JUDICIARY (2)

[The defendant was accused for rape. While the defendant agreed that he had sexual intercourse with the victim, he contested that it was with her consent.]

"If we look at the victim's background, we could see that she had 'flossy job experiences' such as an experience of booth bunny, from ordinary person's perspective. ... She is not suitable for an expression of 'a person with strong sense of prudence and chastity."" (Based on such evaluation about the victim's personality, the court rejected the victim's claim and decided that the defendant is not guilty.) 判例時報1562号141 頁東京地裁判決平成6年12月16日

# SOME EXAMPLES ABOUT GENDER BIAS IN THE JUDICIARY (3)

[This is a sexual harassment suit. The victims sued the man who touched her for 15 minutes and his employer, etc..]

"First of all, we cannot believe that the plaintiff allowed the defendant to do as he wanted for 20 minutes. The plaintiff did not reject the defendant's conduct... equivalent to molestation. The back door was opened. She could escape from the office, but she didn't. Rather, she seemed to be very calm during what had happened based on her testimony. We have to say that it is very unnatural."

判例時報1539号111頁横浜地裁判決平成7年3月24日→Appealed, and reversed.

# SOME EXAMPLES ABOUT GENDER BIAS IN THE JUDICIARY (4)

[The hostess was sued by the wife of a man who had sexual relationship with the hostess. The hostess contested the existence of sexual relationship.] "Generally, the hostess engage in various business operation in order to maintain good customers who regularly come to the Club for her. One of such business operation includes "sleeping with the customer" (makura eigyo), responding to explicit or implicit demand of the customer. This is a well-known fact. Accordingly, even if the hostess repeatedly has sexual relationship with a customer, when it is conducted as makura eigyo, she responds to his sexual desire simply for her business and would never disturb the peaceful marital life. Accordingly, such conduct does not constitute tort against the wife of the customer."

判例時報1539号111頁横浜地裁判決平成7年3月24日→Appealed, and reversed.

# WHY GENDER BIAS IN THE JUDICIARY IS DANGEROUS???

- Danger of bias itself (regardless of gender, race, etc.)
- The person access to court as the last resort. Then again, got hurt.
- Bias can be approved by the court.
- Loose trust and respect for the judiciary.

"when people perceive gender bias in a legal system, whether they suffer from it or not, they lose respect for that system, as well as for the law" (Justice O'Connor (1994))

#### So, it's a long way to achieve...

- Challenges to be tackled:
  - Education
  - Workplace environment for BOTH male and female workers.
  - Awareness activities in society (not only male and female but to promote gender diversity.)