

Confucianism and its Influence on Marriage in Japan under the Meiji Civil Code and the Post-War Constitution.

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Introduction

The new Constitution after Japan's defeat in 1945 brought about unprecedented freedoms for Japanese women in marriage, divorce and family structure. Prior to the new Constitution the document governing the lives of the Japanese, both men and women, was the Meiji Civil Code (明治民法) of 1898, which legally subordinated women to men. The topics of this paper are twofold, 1) to compare the freedoms that the Meiji Civil Code and the 1947 Constitution granted structure and 2) to examine the restrictions that are still in place today limiting the freedom of Japanese women in these areas.

Confucianism and the Meiji Civil Code

Until 1945, Confucian ethics were used to govern Japanese women's morals. The inherent tenets of Confucianism emphasized a hierarchical behavior and outlook in its teachings. Relationships between people was its primary interest in order to maintain social order, political stability and harmony. Confucianism systematically subordinated women in the household and society by emphasizing that in childhood; women were to obey their fathers, upon getting married; to obey their husbands and upon the death of her husband; to obey their oldest male son. The

subjugation of women by men were the results of these tenets. The Meiji leaders of the 19th century were well aware of the impact of Confucianism and as a result introduced the Confucian-like Meiji Civil Code of 1898 with the intention of increasing Japan's production power and population in order to meet the nations immediate goal of "fukoku kyohei" (富国強兵) or (build a rich country, build a strong army).

Marriage Under the Meiji Civil Code

A women's freedom in regards to the institution of marriage was limited in almost every aspect ranging from permission to get married, to spousal selection, to the relationship she had with her husband once married. In order to legally enter into marriage, women under 25 (men under 30) had to obtain the consent of the household head (male) beforehand. However, in so far as most marriages were concerned, the majority were arranged by the parents of both families with no say on the part of the daughter or who her future husband will be. The heads of both households had to approve of the marriage, not the participants¹⁾.

Once married, the wife was treated as a minor by law and was legally dependent on her husband in numerous ways. She was not able to enter into contracts without her husbands consent, property in her name had to be signed over to her husband which was then placed at his disposal, she could easily be divorced without compensation for her livelihood, and in the case that she was divorced; children from the marriage remained in the custody of her ex-husband and his family. Under the Primogeniture Law (長子相続権法); women were forbidden from being registered as head of households, and under the Police Regulatory Law, they were forbidden from joining political parties and meetings²⁾. The possibility of voting

1) Thomar, J.E. (1996) *Modern Japan: A Social History Since 1968*, London, Longman. p.193.

2) Hane, H. (1992) *Modern Japan: A Historical Survey*, Boulder, Westview Press. p.213.

was out of the question.

Marriage Under the New Constitution

Universal suffrage for Japanese women occurred in 1947 with the new post-war Constitution. The two central Articles relating to their liberation are 14 and 15.

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.*

15. *The people shall have the inalienable right to chose their public officials and to discuss them.*

In one fell swoop, equal legal rights were granted to Japanese women by the Constitution. Like their male counterpart, Japanese women now had the right to own property, had the right to divorce on the same grounds that they were previously divorced on, and like men, given the right to vote at age 20. The Primogeniture Law was abolished which meant women could now be registered as household head of their own family. No longer was it necessary for women (or men) to obtain parental consent in order to get married, and unlike before, women now only need to be at least 16 years of age (men 18) in order to legally enter into marriage.

Divorce Under the Meiji Civil Code

Until 1945, Confucian ethics were used to govern women's morals. These demanded that a wife be obedient to her husband no matter regardless of his actions. The case of adultery and its effect on divorce gives an example to the extent of how obedient a wife was expected to be. Though a husband's adultery was to be expected and tolerated, a wife's

adultery was not only grounds for divorce, but it was also legal grounds for criminal prosecution³⁾. Other reasons for divorce were the failure of the wife to conform to the ways of the husband's household, and or the failure on her part to produce the family heir (a son).

There was little a wife could do to prevent herself from being divorced. Though property and financial resources, if any, that were brought into the marriage were in theory supposed to be returned to her upon divorce, in practice this was not always the case. Once divorced, she was left with little or nothing. Children from the marriage remained in the custody of her ex-husband and his family, and alimony or compensation for her livelihood was non-existent. The shame brought to herself and her family was greatly felt.

Divorce Under the New Constitution

Equal rights for men and women are stipulated in the new Constitution. In Contrast to the Meiji era, the majority of divorces in post war Japan are filed by women (55%), while men file divorce (45%) of the time. The remaining (10%) of divorces are filed by concerned parents acting on behalf of their children⁴⁾. Most divorces initiated in post war Japan are because of economic reasons. Women site lack of financial support, incompatibility, and the husband's extramarital affairs as the main reasons for divorce. On the other hand, the main reasons for men to initiate divorce are incompatibility and extramarital affairs on the part of the wife⁵⁾. While previously unable to obtain child custody under the Meiji Civil Code, today women in post war Japan are awarded child custody in more than 80% of divorce cases⁶⁾. An interesting fact

3) Bernstein, G.L. (1991) *Recreating Japanese Women, 1600-1945*, Berkeley, University of California Press. p.8.

4) Iwao, S. (1993) *The Japanese Woman: Traditional Image and Changing Reality*, Cambridge, Harvard University Press. p.116.

5) *ibid.* p.117.

6) Hane, p.401.

that still prevails is that children of divorced parents still remain on the father's family register, as in pre-war Japan.

Family Structure Under the Meiji Civil Code

For centuries the *ie* (家) or stem family household system was used by Tokugawa regime as the basic building block of its political system. The household was the ultimate power which restricted member's behavior and thought, even the household head himself. In prewar Japan, the stem family consisted of a husband and wife, their children and any unmarried siblings. Once the children were grown and married, they would start their own branch of the family line. The eldest son and his family and any of his unmarried siblings would continue living in the household and take care of their parents in old age. Upon the patriarch's expiration (his father), he would become household head of the family. Household head had legal ownership of family property, the right to determine the occupation of family members, the right to determine the place of residence, and approved or disapproved marriages and divorces⁷⁾. Family heads nearly had unlimited legal power over the members of his household.

In the traditional *ie*, the underlying criterion for membership was not necessarily blood relations, but rather shared tasks. Survival of the *ie* was of paramount importance and thus a utilitarian viewpoint of family membership took precedence over blood relations in order to ensure its survival. As a result, succession to the household head was often arranged through adoption in the case that a male heir could not be produced, or in the case that the biological hereditary heir was found to be incompetent⁸⁾.

The Meiji leaders carried this archaic stem family household system

7) *ibid.* p. 36.

8) Van Wolferen, K. (1993) *The Enigma of Japanese Power: People and Politics in a Stateless Nation*, Tokyo, Charles E. Tuttle Company, Inc. p. 68.

into the 20th century with the intention of utilizing it as a building block to support the existing political system and its goals, as in the Tokugawaera. The results of combining the traditional *ie* stem family household system with the legal ramifications of the Confucian Meiji Civil Code of 1898 equaled the successful subjugation of Japanese women to men both in the face of the law and in the eyes of society.

Family Structure Under the New Constitution

Shortly after the war, sentiment that the *ie* system was an evil, feudalistic burden that obstructed modernization began to take hold among the Japanese. Feeling this sentiment and understanding the influence that the traditional *ie* system had under its power, one of the first orders issued by the Supreme Commander of the Allied Powers (SCAP) upon arriving in Japan was its dismantling. The intention was to decentralize authority at the local level and centralize it at the governmental level. SCAP declared the *ie* stem family household system illegal and abolished the main and branch family lines of control. The post war civil code legally stripped the household of its head and their legal rights and duties, and abandoned the formal concept of the *ie* completely. Nuclear families replaced old *ie* families, and the entire *koseki* (戸籍) or family registration system was re-constructed to only include three generations at any one time. Family registries were now compiled on the basis of the nuclear or conjugal family.

Conclusion and Restrictions Today

Japan's defeat in World War II and the new Constitution that followed rendered the Meiji Civil Code of 1898 null and void. In the domain of social reforms, the most significant legal changes were in the family system, especially the status of women. Japanese women were liberated in one fell swoop of the pen that suddenly allowed them to be on equal terms

with men, which previously was unthinkable. In the realm of marriage, divorce and family structure, and among other aspects such as educational opportunities, women obtained the same rights as men as guaranteed by the new Constitution. Women were able to join political parties and meetings and vote like her male counterpart once they reached the age of 20. Women no longer needed permission of the household head in order to get married, and also no longer would marriages be arranged on her behalf without their say in the matter. Furthermore, women gained the right to own property which didn't have to be placed at their husbands disposal once they got married; they were able to enter into legally binding contracts without their husbands permission. Women could divorce on the very same grounds that their husbands could divorce them, and if they did get divorced, there was a very high probability that the woman would retain custody of her children. The Primogeniture Laws, which previously governed succession, were abolished which now allowed women to become heirs to property and wealth and establish their own *koseki* or register their own family branch. Post war women no longer have to fear about being divorced on grounds of not conforming to the ways of her husband's household or her failure to produce an heir. In the words of Kaibara Ekken's *Onna Daigaku* (貝原益軒, 女大学) (1716) "A woman should look upon her husband as if he were Heaven itself⁹⁾", falls on deaf ears.

Restrictions Today

Though we have looked at the gains in freedom that Japanese women are guaranteed by the new Constitution in terms of marriage, divorce and family structure, inequalities still exist in these areas. In the realm of marriage, Japanese law stipulates that a couple is allowed to have only one surname that has been agreed upon by the couple. However, in over 90% of cases, couples select the surname of the husband¹⁰⁾. Cases of

9) Hane, p. 36.

10) Carroll, T. (1996) *By any other name: marriage and names in contemporary Japan*, Tokyo, Japan Forum. p. 67.

hyphenating two surnames together, as are commonly found in the West, at present are forbidden in Japan. Japanese women are required by law to register their new surnames at the workplace and at their local governmental office. This has proven to be particularly troublesome for women in the workplace who are involved in sales as they often lose clients on account of the confusion that commonly follows the changing of ones name. Though her Western counterpart also experiences the confusion that often occurs in the changing of a surname, the point to be made here is that she is not required by law to select with her husband a common family name (and submit it to her employer and local government office.)

Though women have the same legal right to divorce as men on an equal basis as guaranteed by the Constitution, the right to re-marry after a divorce is another matter. After obtaining a divorce, a man is able to re-marry the following day. In the case of a woman who has obtained a divorce, she is not allowed to-marry until six months afterwards. Government rationale holds, in the event that she became from her now ex-husband while they were married, (and assuming that she doesn't have sex with her future husband-to-be until they get married, six months later) it will be quite obvious to all concerned as to who the father of her child is, providing that she was pregnant in the first place. Rather than requiring both women *and* men a waiting period of six months, or requiring a pregnancy test *only* for women who plan to get married within six months, laws that discriminate against women still exist.

The government discourages divorces. Government policy discourages divorces in favor of widows. Unlike divorcees, widows are entitled to special allowances for each child, tax exemptions, special widow stipends and widow allowances¹¹⁾. A widow is entitled to her husband's inheritance

11) Fujimura-Fanselow, K. and Kameda, A. (1995) *Japanese Women*, New York, The Feminist Press. p.16.

and also receive half of his pension. In the case of divorcees, their are no special allowances, no stipends, and in the welfare office, she is entitled to get a small mother/child stipend (which is half of what widows receive). Child support is often low and rarely enforced, making it even more difficult for single parents to raise their children. In addition, children of divorced couples are listed under the ex-husbands family registers, rather than the ex-wives.

Though equal rights between men and women are guaranteed by law in the Constitution, solidarity, paternal authority and male dominance still remain salient features of Japanese society and discriminatory practices in marriage, divorce and family structure still remain.

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