



The Problem of the Compulsory Same Surname System
for a Married Couple in Japan
A Summary of the Issue in Japan

Allow Use of Different Surnames!
- My name is my own! I want to
marry with me as myself and you as
yourself -





1. Overview of the Problem of Compulsory Same Surname System for a Married Couple

- ▶ **Civil Code Article 750: A husband and wife shall adopt the surname of the husband or the wife in accordance with that which is decided at the time of marriage.**

⇒ **Japanese civil code makes it compulsory for either the husband or the wife to change their surname to that of their partner's in marriage.**

- ▶ The compulsory system for a married couple to have the same surname is a remnant of the “**IE (family) system**” introduced by the old civil code enacted in **1898**.

In the “IE (family) system,”

- **The head of the household (husband or father)** is the leader of the family.
- The wife **enters her husband's family** upon marriage.
- The head of the household and all family members take an appellation of the family.

- ▶ After WWII, the “IE (family) system” was abolished as being something used to accelerate Japan's totalitarianism and nationalism. **(1947)**

⇒ However, the system for a married couple to have the same surname remains as a custom firmly rooted in Japanese society.

⇒ As a result, this practice and social consciousness formed under the “IE (family) system” remains.

Even today, 96% of wives in Japan change their surname to that of their husband.

- ▶ Today, **only Japan in the entire world** enforces by law that husbands and wives have the same surname.



2. The call from people married with different names (so-called de facto marriage)

Plaintiff Suing for Different Names of Couple in Second Lawsuit: Izumi Onji

- 1983: Married; marriage registered under husband's surname.
Used my maiden name for some time. (Used my husband's surname at work)
Gave birth to first and second children (under husband's surname)
- 1990 Divorced on paper and returned to my maiden name.
Gave birth to third child (under my maiden name)
De facto marriage since then for nearly 30 years
- March, 2018 Became plaintiff in second different surname lawsuits



3. Disadvantages from the compulsory same surname system

(1) Couples wishing to marry with different surnames cannot be married.

<Reasons for a married couple wanting the option to have different surnames>

A. Human rights aspect

- Surnames “symbolize a person’s individuality” (which is protected under Article 13 in the Japanese Constitution). It constitutes an element of personal rights.

⇒ **One will lose their identity** by changing their surname.

B. Professional aspect

- **The career one has built** with their natural surname **will be interrupted**.

(One will stop being recognized as being the same person; continuation of their performance record and reliability will be extinguished.)

C. Procedural and cost aspects

- Only one spouse of the married couple will have to bear the countless **procedures and costs incurred by changing their surname**, in relation to public institutions and financial institutions.

D. Social consciousness and practice aspects

- The wife is perceived as having “joined” her husband’s family.

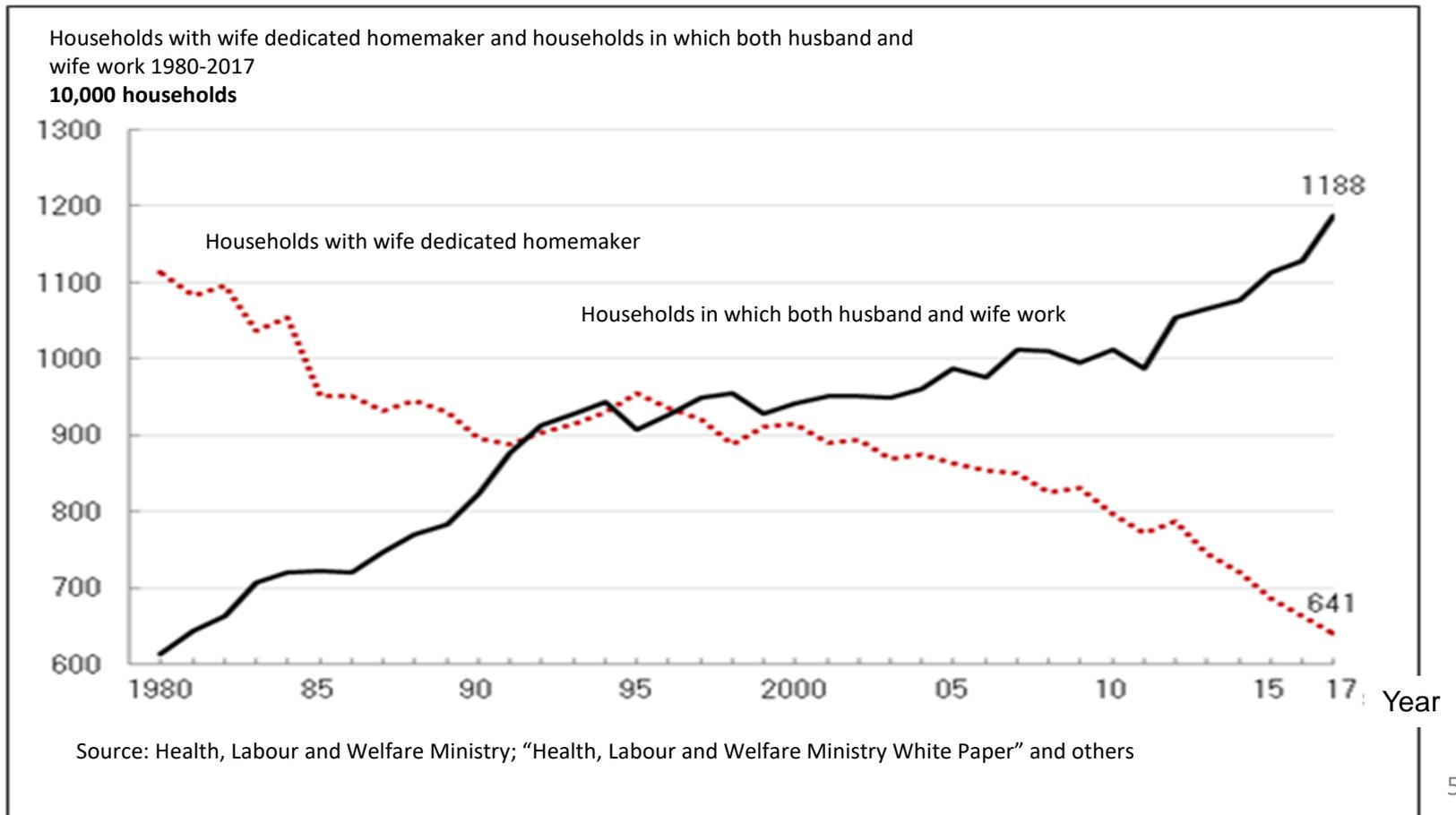
⇒ These cause **inequality between the husband and wife (a violation of Article 14 in the Japanese Constitution), and separation of roles by gender**



* Status of Homes in Japan Today

▸ In the 1980's in Japan, the number of households with a wife as homemaker was higher than households in which both husband and wife worked.

However, in today's Japan, the opposite is true. The number of households in which both the husband and wife work is much greater than the number of households in which the wife is dedicated to homemaking.





3. Disadvantages of the compulsory same surname system

(2) **It is disadvantageous to use a maiden name, or former surname after marriage.**

▶ Today, the Japanese government is expanding the scope in which people can continue using their former surname even after marriage.

This is its effort to solve those problems.

⇒ However, it is up to **other people** to use their former surname as their common name. The following problems occur, however, by using a former surname as one's common name.

- ▶ Confusion occurs from **trying to use two surnames for different occasions.**
 - ⇒ Controlling human resources becomes complicated.
- ▶ Former surnames are also listed in parentheses in passports, but that is not recognized internationally.
 - ⇒ There are instances in which a person is **suspected of undertaking illegal acts.**
- ▶ Unnecessary disclosure of privacy
 - ⇒ Whether a person is married becomes clear by two surnames with a former surname = **Infringement of privacy**
- ▶ An enormous amount of tax money (**exceeding ¥10 billion**) is spent listing both surnames in each certificate.
 - ⇒ If an optional different surname system is allowed, that expense becomes completely unnecessary.



3. Disadvantages from the compulsory same surname system

(3) It is one cause of remaining unmarried, and declining birthrates

- A. The **biggest reason** for selecting a so-called de facto marriage is for husbands and wives to use their own surnames.
- ▶ 89.3% of women, and 64.9% of men in de facto marriage stated this as the biggest reason.
- B. In Japan, there is **no civil partnership system**.
- ⇒ There are economic disadvantages in selecting a de facto marriage. (For example, inheritances, and tax-related issues and the like)
- C. Japanese couples who cannot legally marry tend not to have children.
- ▶ The ratio of having children out of wedlock in Japan is a mere **2.3%**.
Cf: France: 56.7%; UK: 47.6%; USA: 40.2%; Germany: 35.0%
 - ▶ The support system for de facto marriages and out-of-wedlock children is poor.
Eg: Aid for fertility treatment can mostly only be received by legally married couples.
De facto husbands and wives cannot have joint parental authority over their children.
- ⇒ But...a declining birthrate is the most serious issue facing Japan today...isn't it?



4. Legislative trends and UN recommendations

(1) 1996: Amendment proposal for civil code

The Ministry of Justice announced a proposal of an amendment to the civil code including introduction of a system to allow husbands and wives to select to use their own surname.

(2) Strong opposition by the conservative faction of the ruling party

The amendment to the civil code was not submitted to the Diet.

(3) Recommendations from the UN Committee on the Elimination of Discrimination against Women (CEDAW)

The UN CEDAW **has given recommendations to amend the civil code three different years - specifically in 2003, 2009, and again in 2016** because Japan's compulsory same surname system discriminates against women.

⇒ The Japanese government has not followed that recommendations.

(4) Recent stance by the Japanese government

They simply repeat the following. "There are various opinions regarding the introduction of the optional different surname system for a married couple. We will consider it seriously, in light of public opinion because it relates to foundation of Japanese families."



5. Judicial trends

(1) 2015 **First lawsuit on husbands and wives using different surnames** **Supreme court decision**

- Civil code Article 750

It is left to a discussion between people who will become husband and wife to determine whose surname will be used.

⇒ Denial of discrimination based on **gender**.

- “The system for husbands and wives to use the same surname was adopted as Japan’s legal system in 1898 when it was enacted as the old civil law.

This has been established in Japanese society.”

- “It is reasonable to use one appellation for a family.”

⇒ Ruled to be Constitutional.

(2) 2018 **Second lawsuit on husbands and wives using different surnames**

- Asserted that while this is no “gender” discrimination, it is a form of discrimination of “**creed**” between people who desire using the same surname, and people who do not.

- In addition to the unreasonableness of the 2015 decision, this asserted changes to circumstances after the 2015 decision.

(3) 2019 **Tokyo Family Court, Hiroshima Family Court, and Tokyo District Court; rejected claims one after another.**

- The family court blindly followed after the 2015 decision; There is nothing unique to consider.

Discrimination of gender and creed are viewed to be the same.

- The Tokyo District Court said that civil code Article 750 applied to all parties uniformly to decide the surname through discussion by the couple.

It does not discriminate based on creed.

Furthermore, the court decided that circumstances have not changed enough to justify a change to the 2015 decision.



5. Judicial trends

(4) Criticism of the 2015 Supreme Court decision

- **Approximately 96%** of married couples select the husband's surname in Japan.
- ⇒ In effect, there is pressure on women.
- ⇒ It is clear that this is **substantially unequal**, even if it is equal in form.
- The system for husbands and wives to use the same surname has become established in Japanese society.
- ⇒ Protection of a **custom that has become fixed under the "IE (family) system"**
- "It is reasonable to use one appellation for a family."
- ⇒ Is there **reasonableness to make no exceptions?**

(5) Criticism of the 2019 decision

- Clearly, discrimination of **gender** and **creed** are different issues.
- ⇒ The judgment that because this is not discrimination between men and women, it is not discrimination based on creed is clearly unjust.
- Change of circumstances after the 2015 judgment
- The **ratio of working women** has grown since then.
- **66.9%** agree and accept the introduction of an optional system allowing husbands and wives to use different surnames in a Cabinet office poll taken in 2017.
- **Local government assemblies across the country adopted the written opinion seeking introduction of the system allowing husbands and wives to use different surnames.**



6. Criticism of the stance of the Japanese government

- (1) **The government is aware that “there are various opinions regarding the introduction of an optional system allowing husbands and wives to continue using their own surnames.”**
- Why doesn't the Japanese government decide to introduce a system which makes possible to implement all of the different opinions?
 - The compulsory same surname system is based on the logic of "exclusion" while an optional separate surname system is based on the logic of "inclusion."
- cf: Marriage system in New Zealand (multiple marriage selections)
⇒ Which one is reasonable?
- (2) **“We will consider it seriously, in light of public opinion because it relates to foundation of Japanese families”?**
- In the first place, should the government consider how a family should run?
Isn't that too paternalistic?
 - Family = privacy
- ⇒ Shouldn't this be left to an individual's own personal judgment?
⇒ Why is the government involved in such decisions? What is the legal basis for that?



7. Summary

(1) The compulsory same surname system is symbolic of gender discrimination, and a denial of various lifestyles in Japan.

- It maintains the custom of the male-dominated “family system.”
 - The Japanese government stipulated uniformly how the family should run for each individual.
- ⇒ It is impossible to have a variety of lifestyles in Japan with this.

cf: Rugby: Japan’s representative: “The power of diversification” and “everyone is a leader.”

(2) The compulsory same surname system is symbolic of Japan that will not change due to malfunction of legislative and judicial system.

- The public attitude desiring an optional different surname system has been on the rise since the 1980s.

- In 1996, a proposal of a civil code was announced to introduce the system allowing husbands and wives to use different surnames.

⇒ However, this has been frustrated by opposition from the ruling conservative faction.

⇒ Later, there was no regime change, except for a short period.

- Courts also protect a practice that has taken root under the “IE (family) system”

Whether the system allowing husbands and wives to continue using their own surnames will be introduced has been thrown back to the legislature as something that should be decided by the Diet.

⇒ Malfunctioning as a fortification of human rights.

★ Human rights problems must not be decided by a vote of the majority.