

# A Brief Sketch on Equality of the Sexes and Division of Matrimonial Property at Divorce —Revision of the Family Law since 1945

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## 1. Introduction

In 1999, the Gender Neutral Act was passed in order to achieve further improvements in equality for both sexes reflecting the recent changes in their roles in the family and society. In addition to the 1999 Act, the enactment of the Equal Opportunity Act 1985, and a series of revisions to family law, were evidence of gradual but steady developments in equalisation of legal status of men and women for the past half century<sup>1</sup>.

Before 1945, women were legally and socially discriminated against in many ways within the private and public spheres. For instance, once a woman married, she lost her capacity to enter into legal acts, adultery by a wife was an immediate ground for divorce, while unfaithfulness on the part of the husband constituted grounds for divorce only if he was declared guilty of adultery in a criminal court of law, and a mother had no right to claim custody of her children at the time of divorce under the old family law. In the case of public life, female suffrage did not exist, and adultery by a wife constituted a criminal offence, while that of husband only did so with reservation. In this sense, sexual inequality was clearly evident in pre-war Japan.

After the surrender of Japan to the Allied Powers in 1945, the legal framework relating to family matters underwent a radical transformation. First, the Constitution of 1947 stipulated fundamental human rights such as the right to the pursuit of happiness (Article 13), the equality of all people under the law (Article 14), and the equality of both sexes in family life (Article 24), all of which were alien to the pre-war legal framework in Japan. Secondly, in accordance with the new principles of the Constitution, the provisions in the 4th and 5th chapters of the Civil Code (hereinafter cited as the family law) were completely revised.

In an effort to better understand the current situation of equality of both sexes within the family setting, this paper will examine firstly the process and consequences of law reform just after the surrender of Japan to the Allied Forces, focusing specifically on the influence of Western Law on the Constitution. Secondly, the paper will discuss the developments of law relating to matrimonial property and divorce, since the enactment of the new Constitution and the family law after 1945. In doing this<sup>2</sup>, the paper will begin by examining the process of implementation of Article 24 of the Constitution (the equality of the sexes); second, the task of drafting the clause relating to the provision of the division of matrimonial property in divorce, section 768 of the family law, which is said to reflect the principles of Article 24; and finally the developments of law regarding divorce and division of the matrimonial property<sup>3</sup>.

## 2. Law Reform under the Occupation

Each stage of the revision of the family law was marked by intense controversy over the direction in which to proceed. Those who supported law reform consisted of the Supreme Commander of the Allied Powers (known as SCAP), numerous

lawyers, and people who were active in women's movements before 1945 (Okuno:294-296). On the other hand, the call for such reforms was vehemently opposed by those who were in favour of maintaining the Emperor-centred regime and the 'Ie' house system in family law. Thus, the task of reforming the family law was, from the outset, beset by confrontations between these two groups.

## 2. 1. Implementation of Article 24 of the Constitution

### 2. 1. 1. The Allied Power's aims for Law Reform

In line with the Potsdam Declaration in 1945, the Allied Powers proclaimed that de-militarisation and democratisation of Japanese society would be the primary purpose of the occupation. They were determined to eliminate from every corner of society any factor obstructing these aims, and decreed that reforms be promptly achieved in five major areas (Oda:32). These reforms included first, the restructuring of the basic institutions of Japanese society through the dissolution of large business and trading concerns (or the *Zaibatsu*), which had monopolised the Japanese economy; second, the abolition of the 'feudal' landlord-tenant system; and third, the revision of the family law.

The Allied Powers believed that the 'Ie' house system under the Civil Code of 1898 was largely to be blamed for the rise of the Emperor-centred totalitarian regime and the growth of militarism, which eventually led to war with China, triggering the Pacific War. Under the norms of the pre-war 'Ie' house system, members of an 'Ie' house were expected to be subservient to the head of the household, showing unconditional respect to him while refraining from asserting their own views. In contrast, the head of an 'Ie' house could strictly exercise his authority and power over the rest of the members of the household to maintain its propriety. There was a rigid hierarchical order within the family, with new brides and daughters relegated to the lowest rung. An official of the Allied Powers once stated, 'at

present women are chattels here, bastards take precedence over legitimate daughters on the mere whim of a father, and any peasant can sell his daughter if the rice crop is bad' (Takayanagi:206). Submission to paternalistic authority within the family sphere was further reinforced through state education and the media. Moreover, relations within the family could be regarded as a microcosm of the larger society, in which the Emperor represented the pinnacle of the familial state, with all other houses organised below him as branch houses. This ideology of the 'Ie' house was thoroughly internalised, and is thought to have minimised popular resistance to the rise of militarism in the 1930s.

The record of the Allied Powers indicates that they intended to introduce provisions specifically aimed at eliminating anachronistic family customs which it was believed would perpetuate feudalistic institutions in Japan (Takayanagi:310). Specifically, the Allied Powers considered it crucial to reform the family law and to introduce into the new legislation the principles of respect for individual rights and sexual equality.

In late 1945, the Japanese government was ordered by the Allied Powers to draft a new Constitution, and in early 1946 the first draft was submitted to the Allied Powers. This draft, however, retained the spirit of the old Constitution, and consequently fell short of the basic requirements set by the Allied Powers. Noting the Japanese government's reluctance to acknowledge the importance of law reform under democratic principles, the Allied Powers decided to take their own initiative (Oda:112)<sup>4</sup>.

The staff members of the Allied Powers entrusted with the drafting of family provisions modelled the clauses relating to the family on articles from three countries: Article 122 of the Soviet Constitution of 1918 (stipulating the equality of both sexes, the protection of women and children); Article 119 of the

Weimar Constitution of 1919 (detailing the protection of marriage, family, and motherhood) ; and Amendment 19 of the US Constitution (concerning women's right to vote) (Sirota :151-152). Of note is the fact that an early draft even contained clauses relating to the protection of illegitimate children and sexual equality in the labour market (Sirota :186-188) :

Article 〇〇.

The family is the basis of human society and its traditions for good or evil permeate the nation. Hence marriage and the family are protected by law, and it is hereby ordained that they shall rest upon the undisputed/indisputable legal and social equality of both sexes, upon mutual consent instead of parental coercion, and upon co-operation instead of male domination. Laws contrary to these principles shall be abolished, and replaced by others viewing choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family from the standpoint of individual dignity and the essential equality of the sexes.

Article 〇〇.

In all spheres of life laws shall be designed (only) for the promotion and extension of social welfare, and of freedom, justice and democracy. All laws (agreements, contracts or relationships, public or private), which restrict or tend to destroy the welfare of the people shall be (repealed and) replaced by others which promote it. To this end the Diet shall enact legislation which shall protect and aid expectant and nursing mothers, promote infant and child welfare, and establish just rights for illegitimate and adopted children, and for the underprivileged.....(Takayanagi : 222-224)

In fact, these two clauses would have been revolutionary, even

by Western standards at that time, had they been adopted. Indeed, few other constitutions of Western countries contained articles aimed at promoting both the equal status of family members and providing welfare protection for families<sup>5</sup>.

Due to internal pressures within the steering committee of the Allied Powers, a discussion of which is beyond the scope of this paper, these two provisions were ultimately dropped from the final version of the equality clause (Article 23) which reads as follows: (Doi: 15-17)

#### Article XXIII

The family is the basis of human society and its traditions for good or evil permeate the nation. Marriage shall rest upon the indisputable legal and social equality of both sexes, founded upon mutual consent instead of parental coercion, and maintained through co-operation instead of male domination. Laws contrary to these principles shall be abolished, and replaced by others viewing choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family from the standpoint of individual dignity and the essential equality of the sexes (Takayanagi: 276-278).

Nevertheless, the above efforts resulted in the introduction of a new article, which was influenced by Western legal principles on the equality of the sexes.

#### 2. 1. 2. Reaction of the Japanese Government and Parliament to the Draft Article 24

Even under the occupation, the foremost concern of the Japanese government was to ensure the survival of the Emperor-centred regime (Dower: 351-354). The government feared that the implementation of the sexual equality clause in the Constitution would sooner or later lead to the abolition of the

'Ie' house system and consequently undermine the Imperial system. According to a former member of staff of the Allied Powers, the Japanese Government opposed the introduction of the equality clause into the new Constitution, arguing that the social climate was inimical to equal rights for women (Sirota: 216)<sup>6</sup>. The Allied Powers had to overcome the reluctance of the Japanese government to accept the equality clause in the Constitution. As a result, the Government presented the following clause to Parliament.

Clause ○○.

Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual co-operation with the equal rights of husband and wife as a basis. With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family laws shall be enacted from the standpoint of individual authority and the essential equality of the sexes.

In Parliament, a sizeable group of MPs including women elected in the general election of April 1946 supported the introduction of the clause into the Constitution (Shimizu: 494 (Takeda), 504-508 (Kato), 525-526 (Shimoyama), 543-544 (Okochi)). On the other hand, those who regarded the equality clause as being too radical mounted strong opposition against its acceptance. In fact, one member asserted,

Men and women are fundamentally unequal.....From my knowledge, even the venerable British Parliament admit that they can not convert a man into a women and vice versa. No equality between men and women is possible. I am suspicious of the principle of equality of the sexes which derives from a philosophy incompatible with Japanese culture (Shimizu: 492 (Sawada)).

Another popular line of argument was that the 'Ie' house system and the Emperor system were two age-old institutions which are inextricably interlinked (Shimizu:501(Hara)).

However, those opposing the introduction of the equality clause failed to gain support in Parliament because their claims were regarded as inconsistent with democratisation, which was the main purpose of law reforms under the occupation. Ultimately, Article 24, which was regarded as a unique provision due to its equality nature (Dower:380, 386), was enacted with minor revisions.

## 2. 2. Section 768 of the Family Law

Meanwhile, the law reform committee of the Japanese government started deliberations on section 768 of the family law, which was aimed at ensuring financial stability of divorcees (especially a divorced wife), in order to render it compatible with the principles of Article 24. In the old family law, there was no such provision concerning the financial stability of divorcees. To make matters worse, since a wife was regarded as an incapacitated person under the old family law, she had no opportunity of acquiring her own assets during marriage. Furthermore, married and divorced women had little prospect of finding jobs which allowed them to become financially independent since well-paid jobs were mostly closed to women<sup>7</sup>. Under such circumstances, a wife was most likely to face severe financial difficulties after divorce<sup>8</sup>.

Accordingly, in drafting clause 768, the law reform committee emphasised the importance of maintenance after divorce. The key point of this clause was that a wife, for instance, was eligible to claim a distribution of the property which would be sufficient for maintaining a reasonable livelihood after divorce. The clause initially read as follows:

Either party to divorce may demand from the other party the distribution of property which will be sufficient for maintaining reasonable livelihood, and a court shall determine whether any such distribution is to be made or not, and, if it is to be made, the sum as well as the mode of the distribution, taking into account the property of either party and all other circumstances (Okuno:218).

In response to this draft clause, the Allied Powers insisted that a 50:50 criterion for dividing the matrimonial property be provided for in the proposed clause<sup>9</sup>. The rationale for this criterion is said to have been the perceived need to establish a fair and effective standard for protecting divorced wives: such a view reflected the Allied Powers' suspicions toward wide discretionary powers exercised by judges in dealing with such matters. The committee consisted of US lawyers accustomed to such a criterion regarding the division of property (Okuno:115, 138-139 and 141)<sup>10</sup>.

The Japanese side, however, rejected the 50:50 proposal arguing that such a rigid criterion would limit the court's flexibility in resolving disputes. Nevertheless, the Japanese representatives were in accord with the Allied Powers' intention to ensure financial protection of divorced wives, and consequently modified the initial draft clause in order to incorporate such concerns (Okuno:143). Thus, whereas the initial draft emphasised the idea of 'maintenance' after divorce, the finally adopted clause – implemented as section 768 – clearly reflected the principle of the division of co-operatively-acquired matrimonial property.

Section 768:

1. Husband or wife who has affected divorce by agreement may demand the distribution of property from the other spouse.
2. If no agreement is reached or possible between the

parties with respect to the distribution of property in accordance with the provisions of the preceding paragraph, any of the parties may apply to the Family Court for measures to take the place of such agreement; however, this shall not apply after the lapse of two years from the time of the divorce.

3. In the case mentioned in the preceding paragraph, the Family Court shall determine whether any such distribution is to be made or not, and, if it is to be made, the sum as well as the mode of the distribution, taking into account the sum of such property as is acquired by cooperation of the parties and all other circumstances<sup>11</sup>.

Section 768 enabled the wife — regardless of whether she had any earnings of her own — to claim her portion, subject to the court's assessment of her financial contribution to the purchasing and/or maintenance of the matrimonial property.

### 3. Interpretations for Protecting a Financially Vulnerable Party

Under the new family law, there are two main sections concerning financial and property issues of a married couple; section 762 for the legal matrimonial property regime and section 768 for division of the matrimonial property on divorce. Most present-day lawyers accept that these two sections are crucial for protecting a vulnerable spouse involved in family disputes, since they can widen the range of matrimonial property through the interpretation of section 762 and section 768.

#### 3. 1. Developments of Interpretation of Section 762

As previously mentioned, married women before 1945 was

deprived of their rights with regard to matrimonial property and other financial issues in family disputes. In order to promote their legal status, the family law (section 762) adopts the separate property regime under which property and assets owned by each spouse before and during marriage will belong to that party individually, while those acquired during marriage will be presumed to be common property unless either spouse can clearly prove him/herself to be the evident owner. In this respect, a woman is given the opportunity to obtain her own property and assets during marriage.

However, if a woman, particularly a wife, has in many cases no means of acquiring her own assets or separate income, she is unlikely to be protected under section 762 during marriage and on the time of divorce. In the 1960s when the number of housewives increased, lawyers and feminists started to acknowledge the necessity that housewives be treated fairly and equally in terms of matrimonial property and other financial issues even under the section 762 regime<sup>12</sup>. Accordingly, lawyers presented various interpretations of section 762 in order to achieve financial justice among a married couple.

An early interpretation states that if a spouse (an applicant or plaintiff) claimed a share in the assets and property registered under the other's name during the marriage, s/he should prove that s/he actually obtained those assets and property by him/herself or made a joint contribution to them<sup>13</sup>. The Supreme Court declared in one case that a decision on the extent of each spouse's ownership of the matrimonial property should not be made according to the formalities of property registration but rather according to the degree of substantial contribution that each spouse has made to the property<sup>14</sup>.

However, it was usually difficult for an applicant to fulfil the abovementioned requirements, a more recent interpretation dictates that the respondent (defendant) spouse should assume the

same task against the applicant spouse—s/he must prove either that s/he actually gained that asset him/herself or that the applicant spouse had made no contribution to it<sup>15</sup>. In other words, the burden of proof has passed from the applicant to the respondent for the purpose of protecting the interests of financially vulnerable spouse.

Meanwhile, it was recognised among lawyers that the interests of a third party transacting with a married couple should be protected. If a third party is involved in dealings with the property of which ownership has been registered in the name of one spouse (for instance, a matrimonial house), the third party can usually trust the registration description indicating the owner of the property. However, in some cases, the other spouse may be the real owner of that property in spite of the registration description for practical reasons related to the current property registration scheme. Accordingly, it is observed in practice that the bona fide third person will be protected when committing to the transaction, though this does not extend to a third person acting in bad faith. Furthermore, in order to achieve fair and just resolution for a spouse involved in disputes with a third person, protecting the interests of a couple can be regarded as a priority rather than that of the third person<sup>16</sup>.

The developments to the interpretation of section 762 have contributed to widening the range of the matrimonial and for, as a result, improving the legal status of a financially and socially vulnerable spouse in family disputes. By one interpretation, a spouse's separate property can be, in some cases, dealt with as being almost communal/community property (owned by both parties).

### 3. 2. The Variety of Interpretation of Section 768

Despite the wording of section 768, it is widely interpreted by lawyers to mean that the division of matrimonial property on

divorce has three functions in order to achieve a fair and just resolution of the matrimonial dispute<sup>17</sup>; first, it aims to reallocate the matrimonial property that a couple has jointly obtained during the marriage; secondly, it may provide either party with post-divorce maintenance<sup>18</sup>; and thirdly, it includes the payment of additional allowances for any distress caused by the divorce of which the aim is different from the compensation under section 709 (torts).

In the first category, it is unlikely to raise serious problems at the time of division of the matrimonial property under the current separate property regime, if both parties have their own means of gaining an income and obtaining assets during marriage. However, in the case of housewife marriage, most housewives will not be entitled to claim their part of the matrimonial property since it is difficult for them to acquire their own property and to jointly contribute to the matrimonial property with their husbands during the time of marriage. Accordingly, under section 768 the court has a discretionary power to assess the share of the matrimonial property on divorce by taking into account all the circumstances of the marriage (in particular, by expanding the range of the matrimonial assets acquired by joint contribution of the parties in accordance with the interpretations on section 762).

The second category indicates financial support after divorce to a financially vulnerable spouse. Due to the history of the legal system in Japan, no alimony provision existed before this provision. As a result, division of the matrimonial property at divorce is expected to have a function partially similar to alimony. In practice, the court is likely to estimate the amount of division of the matrimonial property as a short-term financial support after divorce (for instance, three years after divorce<sup>19</sup> etc.), but in some cases involving senior people, the court assessed the amount of division of the matrimonial property by considering an applicant's longer period of life after divorce.

In the past, lawyers did not reach a common conclusion regarding the nature of the third aim, in particular, in relation to the relationship between section 768 and section 709. Nowadays, it is accepted by most lawyers that compensation based on this section is different from that of section 709<sup>20</sup>; the former is for the injured feelings of the divorced party upon being forced to give up their marriage, while the latter is for distress brought about by each wrongful act of the guilty party including a third person involved in the wrongful act—such as violence or adultery.

When a dispute arises between a divorcing couple regarding their financial and property interests at divorce, a judge will estimate the final amount through the division of the property by considering the three elements of section 768 in order to achieve a fair and just settlement for the parties.

In addition to the interpretations of section 768, lawyers present further constructions on the property issues at divorce because of the fact that the relationship, social and financial factors relating to the divorcing couple are usually complicated. For instance, it is obvious that the number of middle aged and elderly divorcing couples increased and financial contribution by wives have become substantial to the matrimonial assets. Moreover, the matrimonial property now consists of various interests; real property, pension, life insurance etc. Accordingly, it is necessary for lawyers to examine the nature and content of the matrimonial property and other assets acquired by a divorcing couple, in order to create additional interpretations to provide fair and just protection for the parties. In particular, divorcing parties and divorce lawyers have come to pay much attention to retirement pay and pensions, due to the fact that the number of middle age divorcing couples has increased evidently in the last ten years.

### 3. 2. 1. Retirement/Severance Pay

It is generally understood that retirement/severance pay cannot be divided at the time of divorce unless one spouse has already received a payment of this sort<sup>21</sup>. Indeed, when a couple in their early thirties get divorced, it is unrealistic for a court to divide the matrimonial property taking into account the amount of the retirement pay of one spouse that may be paid in the distant future. In other words, the factor relating to the retirement/severance pay is usually unclear at the time of divorce of younger couples. For instance, the spouse may lose the current job or may die in the very near future.

Meanwhile, a different approach may be applied to middle age and elderly couples. In particular, under the current system, a housewife is not eligible to claim her share of the future retirement/severance pay of her husband if she gets divorced before his retirement. In this respect, some assert that it would be unfair to the housewife in many cases if she has no (potential) share of her husband's entitlement to retirement/severance pay because she has supported him in various ways as a housewife to pay contribution to the retirement/severance scheme during the long term of marriage. In addition, it is strongly asserted that divorcing women, particularly housewives, definitely need financial support at the time of divorce because it is difficult for them to find jobs to cover their living expenses.

Under those circumstances, a court held in one case<sup>22</sup> that the retirement/severance pay can be divided as long as it has been paid into by both parties, and in another case it was further moved that retirement/severance pay can be distributed to a divorcing wife as a part of division of matrimonial property if the time of retirement is feasible, for instance, in five years time<sup>23</sup>.

### 3. 2. 2. Retirement Pension

In the case of retirement pensions, the court did not accept a

claim by a spouse to divide it at the time of divorce since it was uncertain whether it could be paid in the future.

However, some criticise such an interpretation by the courts as being unfair to a financially vulnerable spouse (usually a housewife), since she will be entitled to a basic state pension, which in many cases only provides for a minimum standard of life, if she gets divorced just before her husband attains the age of entitlement to his employment pension. In a recent case<sup>24</sup>, the court estimated the amount of division of the matrimonial property by considering the difference between the pension payment of a husband and that of a wife, for a certain period of time after divorce. In another case<sup>25</sup>, the court decided the division of the matrimonial property would include the retirement payment that would be paid in the near future.

### 3. 2. 3. Others

The court still rejects claims for dividing life insurance or insurance policy by one party before divorce because of its uncertain nature at the time of divorce, notwithstanding the fact that a claiming spouse has contributed for paying premium for a long time of marriage<sup>26</sup> and it could be deemed as a common property of the spouses. Unlike the United State, few cases have been reported with respect to a possibility of dividing professional qualification of a spouse as a marital property<sup>27</sup>.

## 4. Conclusion

Returning to the period of law reform, pronounced sexual inequalities could be observed in legal statutes until immediately before the reforms were implemented. As I suggested earlier, for instance, a married woman was to be treated as an incapacitated person during her marriage and a husband had exclusive rights over the children, under the old family law. Moreover, adultery by the wife was not only a ground for

divorce but also constituted a criminal offence, while such an eventuality was only conditional in the case of a husband.

Under such circumstances, the implementation of Article 24 and Section 768 was regarded as a milestone in the enhancement of the legal status of women. However, this by no means meant that the socio-economic climate was receptive or supportive of such reforms<sup>28</sup>. For instance, the 'Ie' house system — which was predicated on the subordination of women — still prevailed as a social norm, though divested of its legal status. Additionally, the economy did not provide opportunities for women which would permit them to obtain financial independence.

However, once such equality provisions had been enacted, they came to be perceived by women as effective measures for resolving legal disputes on an equal basis. Meanwhile, the socio-economic status of women improved markedly in the post-war era. For instance, it is now not uncommon for couples to share the view that they should cooperate in sustaining their family life (Inoue 1991:167), and many couples regard their income and marital property as jointly owned on an equal basis (Arichi:92). As for educational opportunities, the number of women going on to higher education has risen dramatically. Indeed, while approximately two percent of all female students of high school went on to four-year universities comparing with thirteen percent male students in 1955, the rate climbed to twentythree percent in 1995 (The Prime Minister's Office 1996:Chap.1). Through higher education, more and more women have become conscious of the need for gender equality, and are increasingly acquiring qualifications enabling them to find better-paid jobs in the labour market. In fact, since the 1970s, the number of working women has shown a remarkable upsurge (The Prime Minister's Office 2000:Fig.8, 9 and 10 in Chap.2, Inoue 1995: 191). In this respect, compared with the situation in the post-war period, the changing socio-economic conditions are now not only much more favourable for women to gain financial independence

but also for the realisation of the provisions for the equality of the sexes<sup>29</sup>. However, there still exists deeply rooted discrimination in family life and employment practice against women (The Prime Minister's Office 2000: Fig.16, 17 and 18 in Chap.2). Due to such discrimination, when women come across a critical moment of their life such as divorce, they need further legal and financial protection. To this end, it could be said that the development of the interpretation of section 768 has contributed to improving the legal status of women involved in family disputes.

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#### Endnotes

- 1 In 1990s, women were likely to face difficulties in finding stable fulltime jobs due to the decline of the Japanese economy.
- 2 In this paper, the provisions on family matters include not only those of family law but also of the Constitution.
- 3 When the task of law reform was embarked upon just after Japan's defeat, the social and economic circumstances were not equipped to fully support the enactment of the provisions promoting the equality of both sexes. However, under the strong influence of the Allied Powers - mainly aimed at de-militarising

and democratising Japanese society – the equality provisions were enacted in the Constitution and the family law. In this respect, it can be said that the social, political and economic conditions lagged far behind the process of law reform in Japan.

- 4 Some of the staff of the Allied Powers were closely affiliated with Japanese women leading the campaign for improving the social status of women before 1945. They joined forces to enthusiastically sweep away the residues of the old regime and to work toward the introduction of a new policy on women's legal status (Amano:220).
- 5 Moreover, it is questionable whether women were able to enjoy substantial sexual equality even in western societies, because at that time such view as 'a husband place is at work, a wife's in the house' was not an uncommon family ideology.
- 6 However, this account conflicts with a memorandum left by a Japanese representative to the drafting committee, according to which the Japanese side put up no resistance to the introduction of the equality clause (Sato:122).
- 7 This does not mean, however, that women spent most of their time in the home as housewives. The majority of women at this time were in the labour force as farmers, poorly paid factory workers and home-based workers doing piece-work. Indeed, their participation in the labour force was regarded as supplementary to men's work (Cf. Kawashima, Y.:272-3 in Fujimura-Fanselow).
- 8 In order to alleviate the financial difficulties of a divorced wife, a court often gave approval for a wife to sue her husband for emotional damage by divorce under the tort law. This measure is said to have served a function similar to the division of matrimonial property and/or alimony.
- 9 GHQ only gave the committee information and advice when requested (Oppler,A.C.(1990), *Legal Reform in Occupied Japan* (Japanese translation) Nihonhyoronsha Tokyo, p.99).
- 10 It was also believed in the US that a married woman should stay at home and be in charge of the domestic chores (Cf. Sirota: 227). In this respect, lawyers were in favour of the practice of dividing matrimonial assets into exactly half for the purpose of

- protecting the interests of a housewife who had no opportunity to acquire assets of her own.
- 11 The closing words of paragraph 3 (taking into account the sum of such property as is acquired by cooperation of the parties and all other circumstances) is widely interpreted to account for emotional damages resulting from divorce and/or maintenance after divorce.
  - 12 In the early 1960s, academics and lawyers discussed how to assess the value of the contribution of a housewife's tasks to a property, aiming at giving definition of a legal nature to domestic chores carried out by a housewife.
  - 13 Wagatsuma, S.(1961), *Family Law*, Yuhikaku Tokyo p.103.
  - 14 Decision of Supreme Court 14 July 1959 Saikosaibansho Minjihanreishu 13-7-1023.
  - 15 Aoyama, M. and Arichi, T.(eds.) (1989) *Shimpan Chushaku Minpo 21* (Commentary on the Civil Code New edition) Yuhikaku Tokyo p.464.
  - 16 Decision of Supreme Court 19 December 1983 Saikosaibansho Minjihanreishu 37-10-1532. The court declared in this case, that disposition by a divorcing husband of part of his assets to his wife at the time of divorce as a division of the matrimonial property, did not constitute preferential transaction against a third person.
  - 17 In many cases, courts estimate the final amount of division of the matrimonial property, by adding a portion of reallocation, that of post divorce maintenance, and that of emotional damages out of the property belonging to both spouses. They start calculation on the basis that the spouses have an equal share of the matrimonial assets.
  - 18 The family law does not have any provisions regarding alimony.
  - 19 Decision of Tokyo High Court 30 November 1972 Tokyo-Kotosaibansho-Minjihanketsujiho 23-11-177.
  - 20 The court held that a divorcing party would be entitled to bring proceedings in tort in addition to claiming a share of the matrimonial property as the latter was considered to be insufficient compensation for the injured feelings (Decision of Supreme Court 21 February 1956 Saikosaibansho Minjihanreishu 10-2-124).

- 21 Decision of Nagano District Court 4 December 1957 Kakyusaibansho Minjisaibanreishu 8-12-2271.
- 22 Decision of Tokyo High Court 8 September 1983 Hanreijiho 1095-106.
- 23 Tokyo Family Court 18 May 1999 Kateisaibangeppo 51-11-109 estimated a wife's contribution as fifty percent to the amount of retirement pay.
- 24 Decision of Tokyo High Court 22 November 1989 Kateisaibangeppo 42-3-80.
- 25 Ryugasaki Branch of Mito Family Court in 7 October 1997 Kateisaibangeppo 50-11-86 determined that the payment should be made at the time of the husband's retirement - seven years after the determination of the case.
- 26 Decision of Tokyo High Court 29 January 1986 Kateisaibangeppo 38-9-83.
- 27 Cf. Decision of Osaka High Court 28 December 1977 Hanreitaimuzu 362-38.
- 28 It should be noted, however, that even before the reform period, the court had already made several judgements for protecting and promoting the rights of women. In addition, women's suffrage started in the 1910s. A number of people engaged in such movements before 1945 strongly supported the law reform. Some women participating in these movements were even involved in the process of the law reform. However, although such developments occurred gradually in a circumscribed arena of society, they did not have wide implications for the majority of women (f. Kaneko, S. 'Struggle for Legal Rights and Reforms: A Historical Views' in Fujimura-Fanselow et al).
- 29 It must be noted, however, that various types of discrimination against women still prevail in contemporary Japan in every section of society. As for the details on the changes in families and family law, see Toshitani, N. 'The Reform of Japanese Family law and Changes in the Family System' U.S.-Japan Women's Journal English Supplement No.6 (1994), pp.78-81.