ANTI-SEX DISCRIMINATION IN EMPLOYMENT LAW OF JAPAN: IN COMPARISON WITH CANADA AND U.S. LAW

Masahiro Ken Kuwahara

Professor of Comparative Law and Labour Law
Faculty of Law Niigata University

I PREFACE

(1) The Special Background of the Japanese Law

In April 1986 the Equal Employment Opportunity Act of Japan (JEEOA) was enacted under the framework of the UN Convention of the Elimination of Discrimination Against Women, and the Japanese Constitution's Equality under the Law Clause. The following are specific features of the JEEOA in comparison with the Canadian Human Rights Act (CHRA) and the US Equal Employment Opportunity Act (US EEOA).

It was the year, 1985, that the Japanese Government was required to ratify the UN Convention. The international impact of the Convention was very strong and no one denies that the Government would not have taken her legislative action without it. Unlike what happened in the legislative history in the United States, it was apparent that social movements particularly women's movements were not strong enough to push their legislative demands in Japan(1).

Even though the Coalition of the Four Opposition Political Parties along with trade union representatives had the opportunity to express their opinion at the administrative and congressional committees, their arguments were not well reflected in the JEEOA. One of the reasons for this was that the Government, which had decisive power for passing the JEEOA through the Diet, was a conservative one in power for approximately thirty years under the support of employers' associations.

However, at the last stage of the congressional debate on the JEEOA,

the ruling Liberal Democratic Party finally conceded to the Coalition of the Four Opposition Political Parties. The original JEEOA bill was amended by adding the general provisions. They are Art. 1 which added that the Equal Treatment under the Law Clause of the Constitution shall be taken into consideration in enforcing the Act and a special provision that the Act shall be reviewed in the future when necessary.

The JEEOA is a toothless or wimpy sort of act in comparison to the CHRA and the US EEOA in that the Government defined it as a slow and steady act for achieving the goal of sexual equality in employment. The Government replied to questions raised concerning the weakness of the JEEOA at the Diet by saying that the reasons for this are the Japanese traditional way of thinking about females, the Japanese reality about the female role at home, the females' undeveloped sense of professionalism as workers, the tendency of many female workers to quit their job at the time of their marriage and to give birth to their babies, the cost of education to female workers made ineffective by their short periods of employment, Japanese industrial relations such as lifetime employment, seniority-based practices, fringe benefits and the like(2). It is interesting to note that these opinions were similar to those of the employer's association.

In order to enforce the JEEOA, the Government wished to insert provisions in the JEEOA for ensuring the Japanese type of "administrative guiding" which she herself described as world-famous because of its effectiveness to enforce law. The Government believes it effective in Japanese society because it allows employers "to maintain their faces" rather than to stand accused by the Government and the news media in the face of the public(3). In addition, a lack of the sense of civil disobdience in Japanese society as a whole permits employers to follow this "administrative guiding."

(2) Specific Features of the Japanese Law

The JEEOA is an act authorizing the Regional Directors of the Women and Juveniles Offices of the Labour Ministry to administratively guide conflicting parties or adjudicate disputes concerning discrimination against female workers in employment cases. It is not an act to cover all sorts of discrimination and to issue an order to cease or prevent discriminatory practice, or to compensate the victims discriminated against, as is the CHRA. Rather it aims at reaching resolution by

conciliating or mediating disputes as does the US EEOA, however, except authorizing the Department of Labour to bring cases before court.

The JEEOA' restricted function is only to protect female workers from discrimination between female and male workers. This is because the JEEOA was enacted under international pressure for the Government to adjust the Japanese law in some way to suit the UN Convention, which protects only females from being discriminated against, and the Government did not intend to amend the Labour Standards Act Art. 3 which lacks the word "sex" as one of the prohibited reasons for discrimination in employment. Therefore, it is possible to argue that the JEEOA violates the Equal Treatment under the Law Clause of Constitution Art. 14. Both the CHRA and the US EEOA deal with discrimination of both sexes.

The JEEOA explicitly provides that such employment opportunities as job ad., recruitment, placement, promotion, on the job training, fringe benefits, discharge, quitting or retirement shall be protected from discrimination against female workers. Therefore sexual harassment, which is not mentioned as a prohibited reasons explicitly in the JEEOA, could be construed as outside of the protection of the JEEOA, if authorities interpret the act rigidly. However, even if the JEEOA is interpreted as protecting against sexual harassment, few cases will appear before the Local Directors or courts because of Japanese cultural aspects such as "haji" or shame, or a low degree of sexual liberation(4).

The legal issue of equal value equal pay, which is one of the heated issues in Canada and the US, has not been raised. It is safe to say that the Japanese courts have just recently reached the point of applying the equal work equal pay principle, in the Akita Mutual Bank case(5) and the Nippon Steel Federation case decided by district courts.

The employer's duties to cease or prevent discriminatory employment practices are not necessarily obligatory. The JEEOA categorizes two types of employer's duties. Namely "doryoku gimu" and "kinshi gimu". "Doryoku gimu" is a type of duty which is rarely found in foreign law dictionaries. This is the duty under the JEEOA whereby an employer makes his or her best effort to refrain from discriminatory treatment of female workers in job ad., recruitment, placement, or promotion. If an employer does not fulfill this type of duty, he or she might possibly be regarded as violating "public order and good morals" provided under Art. 90 of Civil Code. The recent Tokyo District Court decision on the Niipon Steel Federation case

suggested that the two tier recruitment system, which placed female workers in general job classifications, and male workers in multiple job classifications, and through which only male workers could be promoted under a higher pay scale, could be seen as violating "the public order and good morals" clause. A few cases will be decided in this way, however, many will not be, since the legislative history of the JEEOA shows that a slow and steady pace, rather than a rapid and compulsory measures, shall be used for persuading Japanese employers to achieve the goal of non discriminatory treatment of female workers in the future(6). Therefore, the concept of "doryoku gimu" mostly consists of a moral code for employers. It is important to know, however, that, by taking advantage of the "doryoku gimu" provisions under the JEEOA, the Director of Regional Women and Juneviles Offices of the Labour Department could take administrative guiding action against employers in violation of the Act by referring to the Department of Labour Guideline, although she must make use of administrative discretion to do so.

"Kinshi gimu" has a legal sense to it in that any employer action violating this type of duty could be regarded as null and void on the grounds that this type of duty has a prohibitory nature. Therefore, when a violation occurs, damage claims can be sustained and a cease and desist order could even possibly be issued in the courts decision.

It should be noted, however, that like the CHRA and the US EEOA, no criminal sanction is provided under the JEEOA against any employer who violates these two types of duties.

Under the JEEOA, any female worker can ask the Director of the Regional Women and Juvenile Office of the Department of Labour to aid in involving female discrimination. During the past year, a lot of inquiries were recieved by the Regional Offices, many of which were anonymus telephone calls(7). This is because of the weaker position of female workers in the companies; they were probably afraid of being discriminated against if their names known to their employers. Another reason could be their feelings of "haji" or shame, a component of Japanese culture mentioned previously.

It should be noted that the JEEOA does not provide a provision which prohibits an employer from discriminating against a female worker because she has asked the Regional Director to help her in an alleged discrimination case. The CHRA and the U.S. EEOA both have this

provision. The Government explained that this is because the JEEOA does not guarantee any female worker the right to procure an order from the Regional Director, but only the chance to ask for help in reaching a resolution with her employer. This will be one of the reasons why a few female workers have asked the Regional Director to help her.

Upon request by a female worker, the Regional Director of the Women and Juneviles Office has the discretion to advise, lead or recommend a solution to the employer concerned. This administative guiding will be carried out depending upon the case, for instance, by asking or persuading the employer to respond to the Director's questions, to follow the recommendation, or to suggest to make public the name of an employer who repeatedly engages in discriminatory practices. It is presumed that, in a case where an employer refuses to amend a working rule which stipulates a discriminatory retirement age between male and female workers, the Regional Director will strongly recommend the employer to ament it in accordance with the JEEOA. The administrative guiding on job advertizment is considered as having been successful. The Department of Labour had held unofficial meetings to explain "doryoku gimu" concerning job advertizment "for companies some months before the JEEOA was enacted at the Regional Office level. According to Department of Labour Research done 4 months after the enactment of the JEEOA, 11 % of companies researched still use the expression "only male workers wanted", while 41 % of the companies advertizing job recruitment used the same expression a year ago(8).

The JEEOA provides for the establishment of Equal Employment Conciliation Commissions in each Prefecture. These Commissions consist of three neutral members, including one female; however, they have simply the authority to submit a conciliatory proposal to the parties. The important difference in comparison with the CHRA is that no legal binding power is granted to the administrative agency; neither the Regional Director nor the Equal Employment Conciliation Commissions can enforce any recommendation to an employer who obviously violates of the JEEOA. Moreover, no authority to appeal the case before the court is enpowered to the administrative agency, as it is in the EEOC under the US EEOA.

Economic incentives are provided under the JEEOA to induce employers to rehire ex-female workers who left the labour market at the time of marriage or pregnacy. There are two kind of governmental funds

available to employers: the Maternity Leave Fund which provides some amount of subsidy for an employer starting a maternity leave program, and the Rehiring Promotion Fund for an employer who starts a program to rehire fomale workers who quit their jobs from that same company to give birth.

(3) The Recent Trend under the JEEOA

The Department of Labour issued the Basic Policy on the Female Workers Welfare in June 1987. Pointing out[9] that the number of female workers has been increasing, that the working conditions of female workers have been improving and that the sense of professionalism of female workers has been changing, the Department declared in the statement that the following four policies will be purpued in the coming five years. These are: to promote an environment for developing female workers' welfare in a general sense, to promote equal employment opportunities for female workers, to promote maternity protection for female workers, and to assist in the employers' rehiring of ex-female workers outside of the labour market.

One important part of this statement is that it refers to the possibility of reviewing the JEEOA by 1992. We can wait and see.

II BASIC FEATURES

The essential differences are found between the Japanese Equal Employment Opportunity Act of 1985[10] and the Canadian and American Acts dealing with sex discrimination in employment. The JEEOA the Act does not provide administrative remedies, but provide administrative assistance to voluntary resolution on labor disputes regarding sex discrimination in employment. On the contrary, the Canadian Human Rights Act of 1977 amended in 1983[11] provides administrative remedies including desist order, back pay, affirmative action and so forth which are to be under the judicial review. The U.S. Civil Rights Act of 1964 amended in 1978[12] goes between the two. The U.S. CRA provides the Equal Employemnt Opportunity Commission (EEOC) set up under the Act to have administrative discretion to sue an employer who did not follow EEOC's conciliatory efforts, but the EEOC has no authority to issue any administrative remedies.

The JEEOA depends upon the "administrative guiding" which means that the Regional Director of the women's Bureau of the Department of Labour can advice, lead or recommend an employer, who will discriminate female workers against male workers, by calling him, by visiing him, by persuading him, and even suggesting disadvantages which will be caused by not following "administrative guiding". Therefore, as the premier Nakasone stated at the Diet that the JEEOA is designed to help voluntary resolution between parties[13], the JEEOA have not strong tooth to employers who discriminate female workers against male workers in employment.

In my opinion, the JEEOA is the weakest Act among the CHRA, U.S. EEOA and JEEOA because of lack of legal remedies set up under the Acts. The reasons for this is not confined to the differences in industrial relations in these countries. The legislative history shows that the JEEOA was enacted under the international pressure of the United Nation Convention on Elimination of Discrimination Against Women[14]. The year of 1985 was the last year which the Japanese delegates had promised to ratify it in accordance with national law at the UN Conference held at Copenhagen in 1980. The demand for new legislation raised from women's movement, labor movement and so forth were not so strong enough to make their other bill enacted. On the other hand, the U.S. and even Canada have the histories of race discrimination which caused their Congress to promulgate these Acts which cover not only sex discrimination in employment but also other types of discrimination.

The public oponion on this matter was still weak to liberate women workers in employment because the traditional concept of women in the Japanese society is predominant. However, the strong resistance taken by the employers' representative at the Governmental Committee in the legislative process of the JEEOA could not be ignored because they have supported the ruling Liberal Democratic Party, the economic policy of which has been successful in the past expansion of the Japanese economy. Their assertion, that it is too early to promulgate a strong employment opportunity act because the women's role in the Japanese society has supported the Japanese economy, has been coincident with that of the LDP.

III HISTORY

The Japanese history on the law concerning sex discrimination in employment will show some reasons for the weak nature of the JEEOA. Already in 1880, the Civil Code Art. 90 had been promulgated[15]. This provision says that any legal action which infringes public policy and good moral shall be null and void. As described later, this provision has been used by the court to make work rules stipulating discrinination of female workers against male workers null and void since the 1966 Sumitomo Cement case on a discharge because of marriage. In 1911 the first Factory Act was enacted which contained Art. 3(1)[16] setting up the maximum working hours for female workers as 12 hours a day and prohibiting night shifts for female workers. However, the broad exceptions such as those for textile female workers were permitted by the Government, and also no right of workers to file complaints on the employer's violation of the Act were provided under the Act. Therefore the enforcement of the Act was dependent on the inspection by the Government which was weak.

The underlying policy of this Act was based upon the Meiji Government's policy that the westernization of the Japanese society was indespensable for her economic development and her building up strong army because Japan was one of the underdevelopment countries at that time. The basic philosophy of the Factory Act was the freedom of contract between employees and employers in deciding the terms and conditions of employment. However, the Factory Act provides a few exceptions as mentioned above for female workers at that time. Therefore the Act intended to protect female workers because they could give birth to healthy young workers as well as strong young soldiers rather than because they were workers who needed to be protected in this sense.

It should be noted that female workers had been prohibited to join any trade union under the Public Security Act Art. 5(1)(5)[17]. This means that, while male workers had been granted their right to join trade unions, female workers had been discriminated against male workers in their demanding their terms and conditions of employemnt through trade unions, even if they were prohibited from engaging their strike actions at that time under the same Act.

The equalization of the women's legal status under the new

Constitution after the end of the World War II has been achieved to some extent. The General Headquarters of the Occupational Forces took the policy of treating female workers equally to male workers in the field of labour law. In 1949 Trade Union Act provided that sex, among other race, religion, family status, and social statuts as discrinimatory reasons, shall not be a reason for expulsion from trade unions (Art. 5(4)[18]. Besides that, Art. 5(3) writes that any trade union member shall be treated equally. These requsites are to be shown by trade union which wants to be recognized as a legitimate union before the Regional Labour Relations Commissions (Art. 5). Anyhow these new provisions are statutory evidences to prove that female workers can no longer be discriminated against within trade unions under the labour law. However, the reality of the percentage of female trade unionsts being elected as union representatives is different from the intention of the provisions. The new JEEOA does not refer to prohibit discriminatory treatment within trade unions, through the U.S. EEOA and the CHRA do deal with the problem. The reason for this is simple as mentioned above that the Japanese Act is not intended to be as a comprehensive human rights act as the U.S. and Canadian Act are, but was legislated under the consideration of coping with the international pressure to ratify the UN Convention in 1985 as the dead line.

The Labour Standards Act of 1947[19], under the Constitution Art. 27(2) which provides that the terms and conditions of employment shall be stipulated under acts, provides the following provisions. However, these provisions were incomplete because of lack of the explicit provision guaranteeing equal treatment in employment in every facets of employemnt. Art. 3 provides that only nationality, creed and social status were referred as prohibiting reasons to discrimination in employment. Namely sex is not worded in Art. 3. Therefore almost all of the courts cases have never cited Art. 3 as an statutory authority in deciding sex discrinimation execpt referring to the legislative intent of Art. 3. This is because judges had to take their conclusion under their grammertical interpretation.

As mentioned above, the Labour Standards Act provided the protective provisions for female workers. Prohibition of night shift work and work on holidays as a rule (Art. 62 and 61). The restriction of dangerous and harmful work (Art. 63). Maternity leave, nursing hours, and menstruation leave (Art. 65, 66, 67). Because of protective nature of these provisions, female workers have been excluded from their labour market to

some extent. For example, female workers were prohibited to work at the height of 5 meters and more if the work were in danger of fall (Labour Ministry Regulation on Minor and Women Workers, Art. 8(24)), even if no such prohibition was regulated for male workers. This regulation was amended under the Labour Standards Act Amendment of 1985. This is a result of new Govermment policy to treat female workers equally to male workers.

IV EMPLOYER'S DUTY

The JEEOA is unique in comparison with the CHRA and the U.S. EEOA in terms of provisions of "doryoku" duty. This type of duty is a symbol of the weakness of the JEEOA because this type of duty simply requires an employer to do his or her best to evade to discriminate female workers against male workers in employment. Even though this type of duty is defined to on job advertisement, hiring, placement and promotion, an employer will be immuned if he or she insists that he or she did the best effort, but unfortunately resulted discriminatory treatment. No penalty is provided under the JEEOA. In the case where a complaint would pursue the procedure under the JEEOA, the Director of Regional Office on Women's Bureau of the Department of Labor, under her discretion, can guide, lead, recommend resolution on voluntary basis. And then, if it is the case of promotion or placement, the Director can bring the case before the Equal Employment Opportunity Conciliation Commission set up under the Act located in every prefecture. However, no legal binding forces are provided to even the conciliation proposals given by the EEOC Commission. The government explained the reason for this weak duty provision. The reasons are the Japanese employment practices of lifetime employment and annually increasing wage system[20]. Under these practices female workers are considered, generally speaking, that they will quit their job after marriage or when their giving birth to their babies. The Government accepted the the opinion raised by the representatives of the employer at the Governmental Committee that employers had to think of general practices of employment and that promotion was decided according to the length of services[21]. As to the remedies in a case of violation of "doryoku" duty, The Government explained in such a way that a female worker could sue an employer for damage claim by citing Civil Code Art. 90 which would

enable the employee to insist that an employer's legal action had violated public order and good moral, therefore it should be null and void[22]. However, discriminatory job advertisement and hiring are not legal actions because they have no legal effects arising out of the legal actions. Even in the cases of promotion and placement as legal actions, it will be difficult for an employee to prove her employer's negligence that he had not fulfilled his duty to his best effort not to discriminate her against male workers unless the onus of proof would be shifted to the employer. There is no such weak duty provided under the CHRA and U.S. EEOA.

In my opinion, the duty to do employer's best effort has simply moral function for employers not to discriminate female workers against male in employment. The remaining hope to enforce this type of duty is depending on the "adminstrative guidance" by the Regional Director, however, this not possible to contested by the party who wants to appeal before the courts.

The JEEOA provides the other type of duty. "Kinshi" duty which means that an employer is prohibited from discrimination of female workers in employment on retirement age, discharge and voluntary quitting job. However, no penalies imposing on an employer who will violate the JEEOA are provided including criminal, and administrative sanctions, Therefore complainants can take advantage of the fact that her employer had violated this type of duty provided under the JEEOA, and the court can declare the employer's action was null and void with the result of restatement and damage awards equivalent to the back pay.

In my opinion in this regards the JEEOA is weaker in comparison with the CHRA because of lack of administrative remedies. Therefore, these provisions can be legal grounds for the Regional Director of Women's Bureau to exercise administrative guiding.

V REASONABLNESS FOR DISCRIMINATION

The Government declared at the Diet discussion that, if any reasonable reason exists, an employer could distinguish legarly female workers from male workers in employment[23]. The criteria of this reasonableness are found in the Labour Ministry Regulation of 1986. These are nothing but administrative guideline which can be judicially reviewed by the courts in the future. The examples of the guideline are such as that in job advertisement "females for assistants, while males for

general job" or "one for female, ten for male" are considered legal, on the other hand only male is wanted for any job" "female workers are excluded from being promoted to the job which can be managed by both sexes" are illegal. These examples are to be based on the specific provision which says that the guideline shall be decided in consideration of the Japanese practices of personnel management, the shorter average of female workers's length of service to the same companies, the avarage consciousness on working life by female workers and the statutory protection for only female workers (JEEOA, Art. 6(2)).

Under the U.S. EEOA "bona fide occupational qualification", which permits an employer to distinguish female workers from male workers if seniority clauses agreeed in a collective agreement, and merit system has exsisted. Other criteria have been decided on case by case basis by courts. In the Week case[24] the 5th Court of Appeal decided that a female graduate who had counselling experiences was reasonabley refused to be hired by the State prison on the ground that she would invoke dangerous situation in the institution where only male inmates were prisoned. But the fifth Court of Appeal narrowed its interpretation on BFOQ by saying that the job for a flight attendance could not be restricted to female simply because of customers' preference and business necessity. But when the business will be deteriolated in the main part of the business restricting the one sex of employment, it is legal to hire or place one sex[25].

When the case is brought before the administrative authority of equal employment opportunity, the employers's right to discharge their employee is restricted, if this is held as illegal discrimination under the statutes. The Canadian Human Rights Commission decided that a police officer could not be fired because of sex if she had ability to judge and behave as a police officer, however, that she could be fired if there was no reasonable reason to believe that she had been discriminated against. In Leblanc case, a female police officer was fired on the ground that she had been in bikini style and talked loudly as she had been a police officer on leave at the beach where the police office had decided as illegal place to be in nude. Because of her behavior at the beach, she was fired and her complaint about it was not supported by the CHR Commission[26].

In my opinion, the new JEEOA provides the statutory ground to restrict the employers's right to discharge female workers because of sex. The JEEOA Art. 11 provides that an employer is prohibited from

discriminatory treatment because of of her sex in discharging and setting up a retirement age. But as mentioned above, an employer still retains the right to discharge employees if there were reasonable reason to do so. The problem will still remain such a case as the Air France case[27] in which a Japanese stewardeswas refused to renew her contract of employment because of her appearance and weight at the age of 37 on the ground that the company had the policy of keeping its stewardes slim and young. The point is on the reasonableness of the company's policy. The slim and young female flight attendants will attract passengers and contribute to the company's profit. However, unless such a over-weight female who will have lost her ability of managing her job as a flight attendant, the increasing her weight and changing her appearance at the age of 37 will not justify her beeing discharged. As this case indicates, the judgment on the reasonableness will be decided on case by case basis.

In Canada, for example federal Government has published "bona fide occupational requirement"[28]. According to this, discrimination because of stero type of understanding on women and the traditional concept of women is regarded as illegal. Therefore ability and experience of an individual employee shall be the key to determine. In some cases, affirmative actions are required to employers to accommodate discriminated persons. These reqirements are under the judicial review, however, the court decisions have been influenced by the U.S. court decisions. For instances in the Shark case[29] the Ontrario Board of Inquiries decided that the employer's refusal to hire the remale applicant on the ground that his rent-a-car business would require an employee to load and unload cargos from trucks was discriminatory. The reasonings were just like those which the U.S. court had issued. The first one delivered was that "all, or substaintially all, women would be unable to perform them" which was established by the Week case as mentioned above. By applying this test the Shark case concluded that the rent-a-car business could be performed by some of a few female workers. The second test which was taken by the Shark case was that "the essence of the business operation would be undermined by not hiring members of one sex exclusively" which had been decided by the Diaz case cited above. In the Shark case it was decided that the refusal of the female applicant would not undermine the essence of the business operation. Here we could find out the strong influence of the U.S. case law on the Canadian jurisdiction.

In my opinion, the Japanese past practices of employment and the consciousness of the average female workers would not be ignored because these criteria were statutory reguirements. However, it should not be ignored that sex discrimination in employment is the violation of human right which is also provided under the Japanese Constitution Art. 14 of equal treatment and the UN Convention ratified by the Japanese Government. Therefore, in condering the statutotry requirements mentioned above, the "undermining the essence of the business operation" test would not be applicable in Japan, but "all, or substantially all" test plus "business necessity" test will be appropriate.

VI DISCHARGE AND RETIREMENT AGE CASES

(1) THE RIGHT TO DISCHARGE AN EMPLOYEE AND RESTRICTIONS UNDER LAW

While Japanese law grants an employer the right to discharge an employee as a fundamental principle[30] under the Civil Code Art. 627, U.S. law also has a basic rule that an employer is guaranteed "the right to discharge an employee for good reason, bad reason or no reason absent discrimination"[31] under a statutory framework.

The U.S.'s restriction under statutes on the employer's right to discharge an employee and terminate a contract of employment consist of Title VII of the Civil Rights Act of 1964, the Pregnancy Discrimination Act of 1978 and the Age Discrimination Act of 1967 as main sources, in addition to the common law doctrine of "employment at will," and the interpretation technique of "constructive discharge." On the contrary, under Japanese law these sorts of restrictions are found in the provisions stipulated in the Labor Standards Act of 1947—a special Act to the general Act of Civil Code —and also found in well established court's doctrines of "violation of public and good moral," prohibition of "abuse of the employer's right to discharge an employee "[32] and" discharge with a justifiable reason." Therefore, though no absolute right to discharge an employee is granted to an employer in both countries, legal tools to restrict it, specifically because of sex discrimination, are different.

It should be noted that the U.S. Supreme Court decisions on Title VII have influenced other courts on sex discrimination discharge cases more than the Japanese Supreme Court decisions have done. This is mainly

because of historical and social backgrounds; the civil rights movement, the women's liberation movement and other movements, which have been weaker in Japan.

The U.S. law has developed "constructive discharge" doctrine which has been applied to sex discrimination cases. The general rule is that, if the employer deliberately makes en employee's working conditions so intolerable that the employee is forced into an involuntary resignation, then the employer is liable for the resignation(33). Under the Japanese doctrine, such as the prohibition of "abuse of the employer's right to discharge an employee" would function likewise, However, "constructive discharge" doctrine will provide more precise requirement to clarify sex discrimination, a malicious intention, intolerable situation and involuntary resignation.

(2) MARRIAGE

In Japan sex discrimination in an employment case was strikingly raised by the Tokyo district in the Sumitomo case in 1966(34). Until that time most Japanese companies could legally treat female employees as being bound by the individual contract of employment which promised they would leave their companies when they got married. The court decided that the contract of employment infringed Civil Code Art. 90 embodied from the legislative intent of Constitution Art. 14 providing equal treatment under the law. Court ruled that even a collective bargaining agreement could not legally bind a female trade union member of the party of the agreement if it had similar provision on the same ground(35).

As cases on sex discrimination discharge because of marriage have been brought before the U.S. courts, the court's decisions on "no-marriage rules" for hiring flight attendants might or might not be applied to discharge cases. The Seventh Circuit wrote that the employer "has presented no direct, rational, or reasonable limited connection between married status, job performance and its no-marriage rule for stewardesses."(36).

The legal analytical tool of "sex plus" was also used for discharge cases on sex discrimination. For instance, sex plus marriage was applied to a case where an employer required a female employee just married to terminate her contract of employment because her husband was also an employee working under the same company. The court decided that this

was discrimination because the company's policy discriminated against her while a male employee who married to a female employee employed by the same company was not required to terminate his contract of employment[37]. However, antinepotism rules affecting one of two employees who get marry have been held[38].

Whether Japanese courts have established "sex plus marriage" tool is not clear. However, Ichinoseki Branch of Morioka district court ruled that a mass discharging standard, which provided that female employees who were married and thirty years of age or more would be required to quit their jobs, was void on the ground that this standard included discriminatory provisions against married females[39]. This reasoning sounds like a "sex plus marriage" rule.

The JEEOA provides three avenues to prohibit discrimination because of marriage. The first one provides that no employer is allowed to stipulate that marriage is one of the discharging clauses (Art. 11(2)). This provision can be interpreted that not only work rules, but also collective bargaining agreements are prohibited to provide a marriage discharging clause. It is sure that this art. 11 (2) was inserted in the JEEOA as a result of the Sumitomo Cement case mentioned above. The second provision in the JEEOA provides that no employer shall not fire employees because of her marriage (11 (3)). This provision prohibites an actual discharging action, as Art. 11(2) prohibits to set up the marriage discharging clause. The third one is Art. 11(1) which says that no employer shall discriminate female workers against male workers on discharge and retirement. This provision prerequsites any sort of discharge or retirement with a reasonable reason for employer concerned, however, it is legally permissible to distinguish females from male. For example, in the case where an employer has a reasonable reason to close down a part of the factory, employer has to select employees to fire without sex discrimination, "female workers who married be the first fired[40] will violate this provision. and "female workers maried with more than two children[41] will be as well.

(3) PREGNANCY AND CHILD BIRTH

While a few cases of discharging female employees because of pregnancy and child-birth in Japan,[42] some cases of this type were reported in the U.S. One of the reasons presumed for Japanese situations is that a number of female employees would have already quit their jobs when

they married. Or. if not, they would take maternity leave under the protection of Labor Standards Act Art. 19 which prohibits an employer from discharging them during and 30 days after leave. The situation is different in the U.S. Although female employees would not quit their jobs simply because of their marriage, generally speaking, employers would exercise more frequently their right to discharge their female employees because of pregnancy or child-birth from their concern for productivity. The Pregnancy Discrimination Act[43] would prevent female employees from being discharged. For example, a female book keeper got reinstatement order when an employer failed to prove a "business necessity"[44] which is a judicially established defense to a prima facie case. A question still remains as to why a few cases have been brought before courts on discharges under the Pregnancy Discrimination Act. The fact that this Act was promulgated recently in 1978 might be one of the reasons for it.

The U.S. courts argued the Constitutional basis for discharged pregnant employees. The due process clause was cited as being violated when a female police officer was discharged when she reported to be pregnant to her employer[45]. In addition to this clause, the equal protection clause was also cited for the discharged pregnant marine[46]. These cases were decided under the influence given by the famous Supreme Court decision on the Cleveland Board of Education v. LaFleur[47]. The court reasoned that "freedom of personal choice in marriage and family affairs is one of the liberties protected by the due process clause of the Fourteenth Amendment. This phrase can be compared with the Sumitomo case[48] and the Mitsui Shipbuilding Co. case in which the district courts wrote that the liberty to marry should not be disturbed by a company's policy for discharging a female employee when she married, because it deprived her of human dignity. Even with such a humanitarian statement, the courts referred to Civil Code Art. 90, not Constitution Art. 14 or 13, as a direct provision violated. Interpretative techniques on the Constitution are different between two countries. Whether the interpretative technique adopted by the Second Circuit Court of the U.S. is similar to a doctrine of so-called "constitutional binding force on third parties" which is denied by the Japanese Supreme Court[50] is open to discussion.

The U.S. courts have applied "sex plus" analysis to pregnant female cases. A pregnant single employee was purported by the court which refused to dismiss Title VII action on a case in which a Catholic high school

asserted "bona fide occupational qualification," provided in Section 1964.(2) of the EEOC Guideline, relating morality[51]. In dicta court held that an unmarried female police officer discharged had established prima facie case of sex discrimination where a police department discharged her after an affair, but did not discharge her married male cohort[52].

One important remaining legal issue is on discharge cases because of fertility or pregnancy for hazardous working environment. To my knowledge, 13 women employees of the American Cyanaid Co. and their union filed a class action in federal district court in West Virginia. It was expected that the court would interpret the Pregnancy Discrimination Act as applicable to the case by expanding its coverage, even if Section 701(k) provides only "pregnancy, childbirth or related medical conditions". As to male fertile employees this interpretation should be applied to them also because it is difficult to find sound reasons to differentiate male employees from female employees under the same Occupational Safety and Health Act of 1970, unless certain hazardous working environment is proved to be safe to male's fertility.

The history of Canadian law in this field poses interesting points, such as examples of grammertical interpretation of statutes and the onus of proof. Before statutes of federal or provicial jurisdictions added the provisions which prohibited discrimination in employment because of pregnancy and childbirth, it was not illegal to discharge female workers because of them. In Re Loblaw Graceteria, the Supreme of Canada decided that it was justifiable to fire a female worker who wanted to take maternity leave which was not granted by the company because there was no such provision in a collective bargaining agreement. The reasoning given by the Court was that a company had the right to keep work moral in his enterprise, and the female worker who wanted to take maternity leave infringed this right[53]. This was 1962 decision. Even since the Human Rights Act type of statutes have been promulgated, the provisions which prohibited simply sex discrimination have been interpreted as not covering discharging case because of pregnancy. The British Columbia Human Commission on pregnancy discharge case in 1976 and the Quebec Human Rights Commission on refusal to reinstate after maternity leave case are both decided as not discriminatory[54]. The reason behind these cases is supposed that discrimination because of pregnancy and childbirth are different treatment between nonpregnant and non childbirth female

workers and pregnant and childbirth female workers. This logic had been adopted by the U.S. Supreme Court in the Aliello case before 1974[55]. After 1980 the Canadian Human Rights Act amendment which inserted an explicit provision, sex discrimination because of pregnancy and childbirth became to be prohibited. The 1981 Saskachevan Human Rights Commission expanded its interpretation of this sort of provision to a case in which a female worker was discriminated because of physical disability arising out of childbirth[56]. This statute has a provision which says that the onus of proof shall be shifted to an employer who insists to discharge a female worker not because of pregnancy or childbirth.

In my opinion, the U.S. and Canadian old reasoning which finds the difference between females should be wiped out from the Japanese Supreme Court decision which was suggested by the Takeda System case in 1984[57]. In this case the Supreme Court upheld the company's decision to cut down some percent of payment for female workers who would take menstrual leave. In this reasoning the Supreme Court suggested that the average Japanese workers would think menstrual leave was beneficial to female workers who dared to take it. This understanding implies that there are some number of female workers who will not take menstrual leave. The point is whether the JEEOA would prohibit employers from discriminating female workers, who take maternity leave or menstrual leave, become pregnant or give birth to a baby. Art. 11(3) provides that an employer shall not discharge female workers because of marriage, pregnancy, childbirth or maternity leave. Therefore, only discharge because of them is prohibited by this provision. On promotion and placement, an employer is prohibited to discriminate female workers because of sex (Art. 8). Therefore this provision will be applied to the cases mentioned above. However, this provision simply requires an employer to do the best not to discriminate. The weak provision to protect them.

(4) SEXUAL HARASSMENT

The EEOC Guideline Section 1604. 11 provides that any unwelcome sexual conduct that "has the purpose or effect of unreasonably interferring with an individual's work performance or creating an intimidating, hostile or offensive work environment" is unlawful. It is surprising for ordinary Japanese to find that several cases were reported of discharge resulting from female employees' refusal to accept their supervisors' demands for

sexual favors. A discharge of a female employee who refused to accept her supervisor's sexual advances was ruled as illegal[58].

The allocation of proof is one of the issues to be noted because it is more difficult for employees as plaintiffs to probe the sufficient nexus between discharged and refusals to accept alleged sexual advances. A court held that the proof standards established by the Supreme Court in the McDonnel Douglas[59] should be relaxed in favor of the plaintiff in case of sexual harassment[60]. If not, sex discrimination will not be easily proved. For example, a female employee has established prima facie case of sex discrimination and sex harassment, but her employer successfully proved through evidences that her performance was poor, and she had falsfied expense and performance records. In this case the court did not hold her refusal to her supervisor's sexual advances as an employer's abuse for discharge[61].

The Canadian experiences show us an important lesson. It is the Ontario Board of Inquiries's decision in 1980 on the Ladas & The Flaming Steer Steak House Tarvern case[62], in which sexual harassment was regarded as none of the terms and conditions of employment. In this case waitresses had been repulsed by a restaurant ower, and, because of their refusal, they claimed that they were discharged. The important part of this decision is in comparison of sexual harassment with harmful substances at work places. It says "There is no reason why the law, which reaches into the work-place so as to protect the work environment from physical or chemical pollution of extremes of temparature, ought not to protect employees as well from negative, pychological and mental effects where adverse and gender directed conduct emanating from a management hierarchy may reasonably be construed to be a condition of employment". However, the limits of this concept should be carefully drawn because sexual advances will be in some occasions induced by a female worker who will take advantage her sexual attraction of her willingness to be promoted to a higher position. Social contact between female workers and their foreman or supervisor should be taken into consideration. This is construed to be an exercise of his freedom of speech. Therefore a factfinding process will be very important to decide whether a fact could constitute illegal sexual haressment.

In my opinion, no case of this sort has been reported in court decisions in Japan because of the Japanese culture of "shame" or the presumption that

any female who will publicize her sexual life will not be accepted by the society as a whole. And also it is hard to conceive that a female worker will sue her foreman or supervisor because of the alleged fact of sexually haressment. Under the JEEOA, sexual haressment will be prohibited only if it is proved that the refusal of it resulted in to discrimination. But, the foremen or supervisor's action of sexual haressment itself, even if it would be proven by evidence, will not violate articles from 7 to 11 which prohibit discriminatory job ad., hiring, on-the-job-training, fringe benefits, retirement quitting, and discharge. A remaining interpretation to prohibit sexual haressment will be one that the objective clause of the JEEOA should be made use of. It provides that this Act aims to improve equal opportunity and working conditions in employment under the idea of equality before the law provided in Constitution Art. 14

(5) RETIREMENT AGE

Even if there exist a few Supreme Court decisions concerned, it is a well established Japanese ruling that a company policy which discriminates against female employee's retirement age is void on the grounds that it violates the public policy and good moral clause provided in Civil Code Art. 90[63]. However, no similar case of this kind has ever been decided by the U.S. Supreme Court. The Age Discrimination Act protects aged employees from younger employees regardless of their sex. A discharge of an old female employee because of her age was decided as illegal by a court[64], but this is not a case of sex discrimination on retirement age.

In my opinion, under the JEEOA sex discrimination on retirement age is definitely prohibited. Art. 11(1) is the reconfirmation of the Supreme Court decision established. Even waitress service which an employer would insist "customers' preference" can not justify the age difference in retirement age. This was stated in the Izu Cacutus Restaurant case of ten year gap between female waitresses and male waiters was decided to be null and void[65].

VII DISPUTE DESOLUTION

The JEEOA does not provide any administrative remedies, but provide administrative help for the parties to solve disputes concerning sex discrimination. The administrative help contains administrative

discretion granted to Regional Directors of Minor and Women located in each prefecture to advise, lead and recommend the parties (Art. 14). This is the first one. The second one is the Director's discretion to file the case before the Regional Employment Opportunity Conciliation Committee which is located at each prefecture (Art. 15). This Committee has no authority to issue any administrative remedies, but propose administrative recommendation to the parties who have their right to accept or refuse it (Art. 18).

Apart from these administrative measures to help a dispute resolution, the JEEOA provides that a dispute concerning sex discrimination is advisable to be solved through a grievance resolution committee (Art. 13).

(1) THE GRIEVANCE RESOLUTION COMMITTEE

The grievance resolution committee shall consist of representatives of both employer and employees, which can be set up in each enterprise (Art. 13). The point is that the JEEOA simply recommends an employer to set up this sort of committee and it suggests this as one of the measures which an employer can make use of, if any, within an enterprise. Therefore it is not the duty of an employer to exhaust this procedure before the dispute will be filed to the Regional Director of Minor and Women Office. Since the JEEOA was enacted from April 1986, no significant practices have started.

Under the CHRA, the parties are required to exhaust a grivance and arbitration procedure by the Human Rights Commission. According to the CHRC's Summary of Decisions, a case is reported in which a female worker who filed a complaint before the CHRC as a first step to solve a dispute was ordered by the CHRC to exhaust her grievance procedure first of all because there was a grievance and arbitration provision provided in a collective bargaining agreement(66). In this case the dispute was lately resolved by the arbitration. Arbitration procedures are common in the Canadian industrial relations. Some number of arbitration cases reported. For example, A female postal worker was awarded $100 for her successful grievance on sexual haressment case when an arbitrator presumed the fact by trusting an oral testiminy(67). These awards are decided by the third party which is an arbitrator.

In Japan where the third party arbitration practices have not developed, It is doubltful the Canadian type of grievance procedures will root in the Japanese industrial relations in the future. Therefore a

grievance procedure, if any, under the JEEOA, will function as a cooling off period for the parties. Such function will be beneficial to the parties to give the parties the time of deliberation on the dispute to solve. And also during the procedure the parties will ready to accept resolution formula which will be created by the parties who know the details of the dispute. A more peaceful and harmonious way of resolution will be pursued than authoritative and third-party-given decision of solution. This may be because the average Japanese employer does not like that any dispute within the enterprise will be publicized. A company's image appealing to the society is important because of not only his maintaining profits but also his keeping face in the society. However, it is important to note the possibility that, during grievance procedure, the employer will give unfavourable pressure to a female, who grieved, through various kinds of management structure. In order to evade such situation, the JEEOA provides that a female worker can file a complaint before the Regional Director of Minor and Women during, or even before a grievance procedure.

(2) INVESTIGATION AND "ADMINISTRATIVE GUIDING"

The other important differences between the JEEOA and the CHRA besides the U.S. EEOA is on the Commission's investigatory power. This power can function not only for fact finding, but also for pushing employers to reach settlement before the administrative agencies.

In the case of Spogis v. the United Airline, the patries had opportunities reaching their own settlement. A stewardess, who had been discharged because of her refusal to move to the job in the office after her marriage, filed her complaint before the EEOC. As the result of it the United Airline changed her policy of "non-marriage rule" which had prevented married women from stewardess job[68]. Under the CHRA, any person who interrupts Commission's investigatory activities will be fined up to $5000 under the CHRA. During an investigatory process, many case have been resolved. According to the CHRC, the 33 % of sex discrimination cases in 1983 was settled under the CHRA[69]. One of the case shows that a CHRC investigation cleared misunderstanding of complaint[70]. The other case suggests that the dispute was solved during investgating period. In this case a female oceanographist, who had been refused to go on board on the ground that there had not been any cabin for female in a ship, dismissed

her complaint from the CHRC because, after the investigation started, the company hired the other female oceanographist and enabled two females to be in one cabin(71). It is safe to say that, because an investigation officer has an authority to submit the fact to the Commission which had another authority to decide the factfinding by which it decide whether the case shall be dismissed or processed before the tribunal, the parties will be sometimes pushed to settle the dispute.

In my opinion, even if the Regional Director has no authority as the Canadian Commission, investigatory power can be used to push the parties to solve a dispute, if it is properly used, because the Regional Director will appear as a super authority as a public official before an employer. In Japan, except aggressive employers generally speaking, an employer will regard a public official, who approaches to him with certain public authority such as investigation, as an irresistable figure. This is because of lack of sense of civil disobiedience in the Japanese society, and the pre-war tradition that public officials behaved as organs of the Emperor. This explanation will be applied to the effectiveness of "administrative guiding", which will be used by the Regional Director to advice, lead and recommend a solution of a dispute. Anyway, talking about the provisions under the JEEOA on the investigatory power, no explicit one as such, however, the Regional Director will do it by calling or visiting or asking an employer to appear before the Director's office in order to ascertain the fact which was claimed by a complainant. The other provision is Art. 33 which grants the Director to carry out investigation for general administrative purposes. The Director's activities as such will prevent sex discrimination in employment in certain shopfloor. However, without administrative remedial power, the Director's authority to investigate and carry out "administrative guiding" are much weaker to achieve their goal than it is provided as in Canada.

(3) CONCILIATION AND MEDIATION

The conciliation service under the JEEOA is provided by the Regional Equal Employment Conciliation Commission set up in each prefecture. The members of the Commission will be appointed by the Minister of Labour as neutral to the parties. The point is that this Commission has no authority to adjudicate, but simply to adjust the dispute. Therefore a conciliatory proposal submitted to the parties has no legal binding power (Art. 19). The

other weak point is that this conciliation procedure shall not be initiated without the consent given by the employer concerned (Art. 15). From this provision, the worst situation conceived is that a rough employer complained would not agree with a complainant to proceed the dispute to this conciliation procedure, or even if once agreed, the employer would not cooperate the procedure. In these case no legal recourse is provided under the JEEOA.

Under the CHRA a conciliation officer will be appointed by the Human Rights Commission after a investigation officer's report was accepted by the Commission. Same as in Japan, no legal binding power is provided to a conciliation proposal, however, the next step when the proposal will not be accepted is provided under the Act. That is a procedure of tribunal which has adjudication power, which might let conciliation process more persuasive than otherwise. In an agency case, a female assistant who had discharged because of her refusal of sexual advance by her boss agreed to accept a conciliatory proposal submitted by the Commission. The proposal was that the boss should be removed from the post, that $3500 should be paid to the female complainant, and that the company should regulate the code of conduct on sexual haressment in the company. This proposal was finally accepted by the company, too[72]. The voluntary settlement case during the conciliation procedure is also reported. This is the Canadian National Railways Inc. case in which female applicants who had claimed not to be hired because of sex agreed to accept a settlement proposal submitted by the employer. These were that applicants could take the same job test as males did, that the employer paid back payment equivalent to the amount which would have been paid if they would have pass the test at the inital day[73]. This settlement was approved by the Commission which it has the authority to do so. The 13.6% out of the cases resolved in 1983 was solved by the Commission's conciliation service[74].

In my opinion, conciliation service would work to some extent to solve sex discrimination dispute. But not so much as labour dispute adjustment cases at the Regional Labour Relations Commission in which mediation service as well as conciliation service is popular. My guess is that a cases will be resolved by the Commission because especially employers who will be asked to appear before the Commission might feel the Commission is much authoritative than the Regional Director of Minor and Women,otherwise might dislike to be asked to appear before it. The Commission is

composed of the neutal member of the Commission, who will be university professors, a chief editor of a local leading newspaper, and like who have higher social status in the region. Again, the fact that the average employer in Japan loves to maintain their faces and reputation in the society. Neverthless, in sex discrimination cases, an individual female is a complainant if no organizational support. This suggests the balance of power between the parties. The percentage of resolution at conciliation procedure will be lower than that at a labour dispute adjustment procedure which was 57.4 % in 1984(75). As 95.7 % out of the cases filed before the Regional Labour Relations Commissions in 1984 was resolved by mediation rather than conciliation(76), I suspect many cases of sex discrimination in employemnt would be solved by mediation before a conciliation proposal will be submitted to the parties during conciliation procedure.

The weakest point in the JEEOA is that it has no provision granting administrative authorities to give sanction to an employer who will not follow them. Even the U.S. Civil Rights Act of 1964, which has no administrative remedies provision, has provisions such as the EEOC's power to sue an employer and to publicize the name of the employer to the public. There is certainly a loop hole for cunning employers under the JEEOA.

FOOTNOTE

(1) Masahiro Ken Kuwahara, EQUAL EMPLOYMENT PRACTICES AND LAW: JAPAN, CANADA AND U.S., p. 47 ff., SOUGOU ROODO KENKYUUSHO, 1985.

(2) Director of Women's Bureau, Department of Labour, THE MINUTE OF THE 102 LOWER HOUSE SOCIAL LABOUR COMMITTEE, No. 18, p. 13.

(3) An interview with the Director of Women's Policy Section, Women's Bureau, Department of Labour, on May 27, 1987.

(4) The first case was reported in a newspaper of a husband who "raped" his wife togather with his friend and who was sentenced to two years and ten months imprisonment. THE ASAHI SHINBUN, Dec. 10, 1986.

(5) The Akita Mutual Bank case, Akita District Court, April 10, 1975, ROUDOU JUNPOU (hereinafter ROH. JUN.) No. 882, p. 79.

(6) The Nippon Steel Federation Case, Tokyo District Court, Dec. 4, 1986, ROUDOU HANREI (hereinafter ROH. HAN.) No. 486 p. 28. cf. the case comments: Yasuhiko Matsuda, JURIST, No. 881 (April 1, 1987). p. 54 ff,; Fujirou Hamada, HOUGAKU KYOUSHITSU No. 81 p. 91, May 1987.

(7) An interview with the Vice Director of Women's Policy Section, Women's Bureau, Department of Labour, on Dec. 20, 1986 and the Regional Director of Niigata Women and Juneviles Office, Department of Labour, on April 23, 1987.

(8) The Josei Shokugyou Zaidan, the ASAHI SHINBUN, Dec. 28, 1986. Kazuo Sugeno, One Year Experience under the JEEOA, JURIST No. 881, p. 44 (April 1, 1987).

(9) The following statistics were reported in the FEMALE WORKERS' WELFARE POLICY published on June 1, 1987. The percentage of female workers among the working population in 1986 was 39.8 %. Among female workers, 58.8 % are married. 77.8 % of hospital workers are female, while 1.4 % of managerial employees are female. The average term of employment for female workers was 6.8 years while that of male workers was 11.9 in 1985. The number of female workers who worked within a year was 22.9 % in 1965, but it decreased to 13.3 % in 1985. Female workers with more than 5 years but less than 14 year service counted for 20.5 % in 1965, they increased to 33.8 % in 1985. Female workers who quit their jobs because of marriage and giving birth formed 25.2 % in 1975, but decreased to 21 % in 1985. 49.1 % of female workers wanted to keep their job after marriage or giving birth and 11.6 % of them wished to keep their job until retirement age. The average salaries for female workers who were from 20 years old to 24 years old have improved from 89.1 % in 1976 to 96.6 % in 1985, provided that those of male workers were 100 %. 87.2 % of the public polled said that husbands should support their families, while wives should do work such as laundry (94.4 %), meal preparation (95.2 %), daily shopping (89.4 %) and so forth.

(10) Act of May 17, 1985, Public Law No. 45 and Amendment Act of May 17, 1985 of Act of July 1, 1972, Public Law No. 113.

(11) Act of July 14, 1977, c. 33, amended by 1977–78, c. 22, 1980–81–82–83, c. 111, 143

(12) Act of 1964, as amended by March 24, 1972, P.L. 92–261, Sec. 2 November 6, 1978, P.L. 95–598.

(13) Yasuhiro Nakasone, LOWER HOUSE, 101 st SESSION NO. 32, at 986 (June 26, 1984).

(14) UN Convention, ratification in 1979.

(15) Act of April 27, 1890, Public Law No. 89.

(16) Act of March 29, 1911, Public Act No. 46.

(17) Act of April 22, 1919, Public Law. No. 46.

(18) Act of June 1, 1949, Public Law, No. 174.

(19) Act of April 7, 1947, Public Act No. 49.

(20) Yoshiko Akamatsu, Director of Minor and Women's Bureau, Ministry of Labour, UPPER HOUSE, 102 st SESSION, SOCIAL AND LABOUR COMMITTEE, NO. 13, at 8.

(21) Ministry of Labour, "The Discussion on the Policy to develop the Equal Employment Opportunity in Employment at the Women's Section of the

Women and Minor Committee", at 2 (December 2, 1983).
(22) Nakasone, supra note 4, at 726.
(23) Akamatsu, supra note 11, at 8.
(24) Week v. Southern Bell Telephone and Telegragh Co., 408 F. 2d 228 (5th Cir., 1969).
(25) Diaz v. PANAM World Airways Inc., 331 F. Supp. 559 (1971), 442 F. 2d. 385 (1971).
(26) LeBlanc, CHRC, SUMMARY OF DECISIONS (May 1983), at 2.
(27) Air France case, RŌDŌ HŌRITSU JUNPŌ No. 867, at 66.
(28) Bona Fide Occupational Guidelines SI/82–3, CANADA GAZZETTE, June 13, 1982, CHRC, 1982 ANNUAL REPORT, at 25.
(29) Shark v. London Drive-Yourself Ltd. (1974), cited in WALTER TARNOPOLSKY, DISCRIMINATION AND THE LAW IN CANADA, at 291, Carswell (1983).
(30) Occupational Forces at Otsu Camp case, 4 ROH.ROH. KANKEI MINJI SAIBAN REISHŪ (hereinafter ROH. MIN. SHU.) 50 (Otsu D. C. Mar. 14, 1953). Fuji Steel Mfg. Co. case, 64 ROH. MIN. SHU. (Kobe D.C. Mar. 31, 1952).
(31) Tims v. Bd. of Educ., 452 F. 2d 551, 552, 4 FEP 127, 128 (6th Cir. 1971).
(32) Japan Salt Mfg. Co. case, 227 ROH. HAN. (S.C. Apr. 25, 1975); Kochi Broadcasting Co. case, 267 ROH. HAN. (S. C. Jan. 31, 1977).
(33) cf. Bourque v. Powel Electric Manufacturing Co., 617 F. 2d 61 (5th Cir. 1980).
(34) Sumitomo Cement case, ROH. MIN. SHU. Vol. 17, at 1407, Tokyo Ditrict Court (December 20, 1966).
(35) Id.
(36) Sprogis v. United Air Lines, 444 F. 2d 1194, 3 FEP 621 (7th Cir.), cert. denied, 404 U.S. 991 (1971).
(37) Tuck v. McGraw-Hill & Sons Inc. 421 F. Supp. 39 (S.D.N.Y. 1976).
(38) Id.
(39) Onoda Cement Go. case, 19 ROH. MIN. SHU. 522 (Apr. 10, 1968).
(40) Japan Special Metal Factory case, Tokyo District Court Hachiooji Branch, ROH han, No. 166, at 18 (October 18, 1972).
(41) Kobaru case, Tokyo District Court, ROH. HAN. No. 233, at 11 (September 12, 1975).
(42) Asaka Wako Kindergarten case, 177 ROH. HAN. (Urawa D.C. Mar. 3, 1972)
(43) Section 701(k) of Title VII
(44) Holthaus v. Compton & Sons Inc., 514 F. 2d 651, 10 FEP 601 (8th Cir. 1975); Beard v. Society Nat'l Bank, 17 F. 2d 192 (N.D.Ohio. 1978); Newnon v. Delta Airlines Inc., 374 F. Supp. 238, 7FEP26 (N.D. Ga. 1973).
(45) U.S. v. City of Philly., 573 F.2d 892 (3rd Cir.), cert. denied 439 U.S. 810 (1978).
(46) Crowford v. Cushman, 531 F. 2d 1114 (2d Cir. 1976); supra note 5, at

1121–5.

(47) 414 U.S. 632.

(48) Supra note 23.

(49) Mitsubishi Ship building Co. case, Osaka District Court, ROH. JUN. Vol. 804, at 87 (December 10, 1971).

(50) Mitsubishi Jushi case, 189 ROH. HAN. (Dec. 12, 1974).

(51) Dolter v. Wahlert High Sch., 482 F. Supp. 266 (N.D. Iowa 1980).

(52) Krzyewski v. Metro. Gov't., 14 FEP 1024 (M.D.TENN. 1976).

(53) Re Loblaw Graceteria, (1962) 13 L.A., at 96.

(54) H.W. and Draff v. Rivitta Reservation of Canada Ltd. (1976) and Comm. des Droite de la Personne C. Aristerat Apartment Hotel (1978) C.S.1971, cited in TARNOPOLSKY, supra note 20, at 266.

(55) Geduldig v. Aiello, 417 U.S. 484 (1979).

(56) Saskachewan Wermbecker v. Super Valu and Westfair Foods Ltd. (Feb. 16, 1981), cited in TARNOPOLSKY, supra note 20, at 265.

(57) Takada Shisutem case, Supreme Court, HAN. JI. Vol. 1101 (November 25, 1983).

(58) Heelen v. John-Manvill Corp., 451 F.Supp.1382 (D.Colo. 1978).

(59) 411 U.S. 792, 5 FEP 965 (1975).

(60) Bundy v. Jackson, 641 F. 2d 934, 24 FEP 1155 (D.C.Cir. 1981).

(61) Davis v. Bristol Laboratories, 26 FEP 1351 (W.D.Okla. 1981).

(62) Bellaand Korczack v. Ladas and The Flaming Steer Steak House Tavern Inc., (1980), cited in TARNOPOLKY, supera note 20, at 273.

(63) Izu Saboten Restaurant case, 233 ROH. HAN. 46 (S.C. Aug. 29, 1975); Nitsusan Auto Mfg. Co. case, 350 ROH. HAN. 23 (S.C. Mar. 24, 1981).

(64) Scofield v. Bolts & Bolts Retail Stores, 21 FEP 1478 (S.D.N.Y. 1979).

(65) Supra note 54.

(66) CHRC, SUMMARY OF DECISIONS (March 1981), at 4.

(67) Re Canada Postal Corp. and CUPW, June 28, 1983, K.E. Norman, 11 Lab. Arb. Cases (3d), at 13.

(68) Supra note 27.

(69) CHRC, THE 1983 ANNUAL REPORT, at 21 and 39.

(70) CHRC, ibid., at 21.

(71) Bedford Inst. of Oceanolography, CHRC, SUMMARY OF DECISIONS (Sep. 1, 1979) at 7–8.

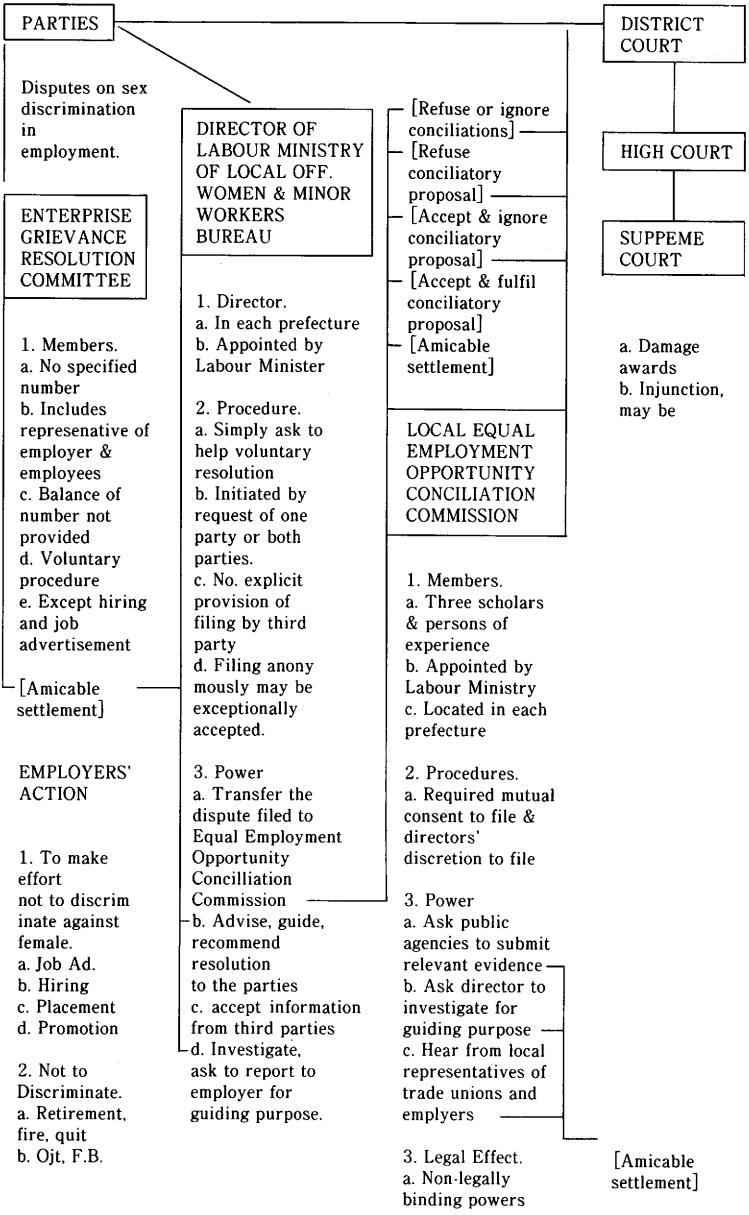
(72) CHRC, THE 1982 ANNUAL REPORT, at 25.

(73) Action Travail des Femmes v. Canadian Nat'l and CHRC, CHRR (July 1984) D/2337, at 2334.

(74) Supra note 60.

(75) CHUO RODO IINKAI (Central Labour Relations Commission), SUMMARY OF UNFAIR LABOUR PRACTICES CASES AND LABOUR DISPUTE ADJUSTMENT CASES IN 1984, st 113.

(76) Id.


PARTIES
DISTRICT COURT
Disputes on sex discrimination in employment.
DIRECTOR OF LABOUR MINISTRY OF LOCAL OFF. WOMEN & MINOR WORKERS BUREAU
[Refuse or ignore conciliations]
[Refuse conciliatory proposal]
[Accept & ignore conciliatory proposal]
[Accept & fulfil conciliatory proposal]
[Amicable settlement]
HIGH COURT
SUPPEME COURT
ENTERPRISE GRIEVANCE RESOLUTION COMMITTEE
1. Members.
a. No specified number
b. Includes represenative of employer & employees
c. Balance of number not provided
d. Voluntary procedure
e. Except hiring and job advertisement
[Amicable settlement]
1. Director.
a. In each prefecture
b. Appointed by Labour Minister
2. Procedure.
a. Simply ask to help voluntary resolution
b. Initiated by request of one party or both parties.
c. No. explicit provision of filing by third party
d. Filing anony mously may be exceptionally accepted.
3. Power
a. Transfer the dispute filed to Equal Employment Opportunity Concilliation Commission
b. Advise, guide, recommend resolution to the parties
c. accept information from third parties
d. Investigate, ask to report to employer for guiding purpose.
a. Damage awards
b. Injunction, may be
LOCAL EQUAL EMPLOYMENT OPPORTUNITY CONCILIATION COMMISSION
1. Members.
a. Three scholars & persons of experience
b. Appointed by Labour Ministry
c. Located in each prefecture
2. Procedures.
a. Required mutual consent to file & directors' discretion to file
3. Power
a. Ask public agencies to submit relevant evidence
b. Ask director to investigate for guiding purpose
c. Hear from local representatives of trade unions and emplyers
3. Legal Effect.
a. Non-legally binding powers
[Amicable settlement]
EMPLOYERS' ACTION
1. To make effort not to discrim inate against female.
a. Job Ad.
b. Hiring
c. Placement
d. Promotion
2. Not to Discriminate.
a. Retirement, fire, quit
b. Ojt, F.B.