

Additional Information Related to the Issue of Equality between Men and Women (Paragraph 8) in the List of Issues (CCPR/C/JPN/QPR/7) by the Human Rights Committee

June 29, 2022

Japan Federation of Bar Associations

1. Status since July 16, 2020

Since the preparation by the JFBA on the “IX. Equality between Men and Women (Paragraph 8)” of the “Report of JFBA Regarding the Seventh Periodic Report by the Government of Japan based on Article 40(b) of the International Covenant on Civil and Political Rights” dated July 16, 2020 (hereinafter referred to as the “Report”), Article 750 of the Civil Code which stipulates for “the same-surname requirement for married couples” has not been amended, and the women’s social participation rate in the political arena remains low. On the other hand, as for the remarriage prohibition period for women, the Legislative Council of the Ministry of Justice drew up an “Outline of Amendment of the Civil Code (Parent-Child Legislation), etc.,” on February 1, 2022, which includes the deletion of Article 733 that stipulates for the prohibition of remarriage of women<sup>1 2</sup>.

2. Optional separate surname System (either each keep their own surname or use the samesurname)

(1) Judgment of the Grand Bench of the Supreme Court on December 16, 2015

In this case, the appellants sought damages under Article 1, paragraph (1) of the State Redress Act on the grounds that, although Article 750 of the Civil Code which forces a change of the surname of either the husband or the wife at the time of marriage violates various rights guaranteed under the Constitution, the Diet had failed to take legislative measures to amend it and establish a separate surname system.

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<sup>1</sup> It was drawn up at the 25th Meeting of the Subcommittee of the Legislative Council on the Civil Code (Parent-Child legislation) (held on February 1, 2022).

Ministry of Justice: “Draft Outline of Amendment of the Civil Code (Parent-Child Legislation)” (February 1, 2022)

<https://www.moj.go.jp/content/001366349.pdf>

<sup>2</sup> With respect to the Draft Outline, the JFBA published the “Statement concerning the Outline of Amendment of the Civil Code (Parent-Child Legislation), etc.,” (February 16, 2022) to express its opinion.

<https://www.nichibenren.or.jp/document/statement/year/2022/220216.html>

On December 16, 2015, the Supreme Court held that Article 750 of the Civil Code which imposes the same surname of spouses does not violate Article 13, Article 14 or Article 24 of the Constitution (hereinafter referred to as “Judgment”)<sup>3</sup>.

In response to the argument that Article 750 of the Civil Code unreasonably infringes the freedom of not being forced to change one’s surname and violates Article 13 of the Constitution, the Judgment pointed out that “the situation discussed in this case is one where either a husband or wife changes his/her surname upon choosing to change his/her personal status by marriage at his/her will, and in such situation, neither of them is forced to change his/her name against his/her will,” concluded that “‘freedom from being forced to change one’s surname’ at the time of marriage cannot be regarded as part of personal rights that are guaranteed as constitutional rights,” and held that Article 750 of the Civil Code does not violate Article 13 of the Constitution.

Further, in response to the argument that Article 750 of the Civil Code creates gender discrimination in that more than 96% of all married couples choose the husband’s surname, the Judgment held that “although it is found that the overwhelming majority of married couples in Japan choose the husband’s surname through discussion between the persons who are to marry, this cannot be regarded as the consequence arising directly from the substance of the Provision,” and held that it does not violate Article 14, paragraph (1) of the Constitution.

Furthermore, in response to the argument that Article 750 of the Civil Code in effect infringes freedom to marry by requiring either of the persons who are to marry to change his/her surname in order to submit a notification of marriage, the Judgment held that “although the same surname system does not permit a married couple to use separate surnames,” “this system cannot be found to be unreasonable immediately in light of the requirement of individual dignity and the essential equality of the sexes” and held that it does not violate Article 24 of the Constitution.

In the Judgment, five out of the fifteen justices expressed their opinions that Article 750 of the Civil Code violates Article 24 of the Constitution which stipulates freedom to marry. Justice Kiyoko Okabe pointed out that, due to the same surname system, in most cases, this imposes a burden on the wife, such as impairing the wife’s personal identity function and a feeling of self-loss, and indicated that the same surname system could not be regarded as a system established from the standpoint of individual dignity

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<sup>3</sup> Judgment of the Grand Bench of the Supreme Court of December 16, 2015 (Case No. 2014 (O) 1023) [https://www.courts.go.jp/app/hanrei\\_en/detail?id=1435](https://www.courts.go.jp/app/hanrei_en/detail?id=1435) (English)  
[https://www.courts.go.jp/app/files/hanrei\\_jp/546/085546\\_hanrei.pdf](https://www.courts.go.jp/app/files/hanrei_jp/546/085546_hanrei.pdf) (Japanese)

and the essential equality of the sexes. Justice Michiyoshi Kiuchi pointed out that “the system that requires a married couple to adopt the same surname upon marriage is considered to be against individual dignity and the essential equality of the sexes provided in Article 24 of the Constitution.”

## (2) Change in Societal Attitudes

As we stated in “IX. Equality between Men and Women (Paragraph 8)” of the Report, in “Public Opinion Poll on the Family Legal System” published by the Cabinet Office in February 2018, in response to a question on the optional separate surname system, a record-high of 42.5% of the respondents replied “I don’t mind if the law is changed so that, if the husband and wife desire to keep their respective pre-marriage surnames, they may keep their pre-marriage surnames,” while a record-low 29.3% replied “Once married, the married couple should have the same surname, and there is no need to amend the current law” in opposition to the optional separate surname system, the former exceeding the latter. In particular, among women aged between 18 and 49, more than 50% of the respondents agreed with the former, indicating that public attitudes toward the optional separate surname system are changing<sup>4</sup>.

Further, in “Public Opinion Poll on the Family Legal System” published by the Cabinet Office in March 2022, in response to a question on the optional separate surname system, those who replied “The current same surname system should be maintained” accounted for 16.1% among those aged between 18 and 29, 12.7% among those aged between 30 and 39, 16.8% among those aged between 40 and 49, 20.7% among those aged between 50 and 59, 25.5% among those aged between 60 and 69, and 47.8% among those aged 70 or older, indicating that the younger a person is, the less likely it is that he/she supports the same surname system<sup>5</sup>.

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<sup>4</sup> Public Relations Office, Cabinet Office: “Outline of the ‘Public Opinion Poll on the Family Legal System’” (surveyed in December 2017, published in February 2018)

<https://survey.gov-online.go.jp/h29/h29-kazoku/gairyaku.pdf>

<sup>5</sup> Public Relations Office, Cabinet Office: “Outline of the ‘Public Opinion Poll on the Family Legal System’” (surveyed in December 2021, published in March 2022)

<https://survey.gov-online.go.jp/r03/r03-kazoku/gairyaku.pdf>

In this Survey, the content of questions regarding the optional separate surname system was changed from the questions used in the past five opinion polls conducted in June 1996, May 2001, December 2006, December 2012 and December 2017. Further, an additional question was included immediately before the question regarding the optional separate surname system, asking, “Q. 10 What is your opinion regarding whether a married couple having different surnames would influence their child/children? (Check only one),” providing the choice of answers “1. I think it would have an unfavorable influence on the child/children” and “2. I don’t think it would have any influence on the child/children.” Furthermore, those who chose “1. I think it would have an unfavorable influence on the child/children” in Q. 10 were further asked to answer “Q. 11 Opinions that it would have an unfavorable influence on the child/children of such a married couple include the following. Please

In addition, written opinions, etc., calling on the Government to introduce the optional separate surname system have been adopted one after another by local assemblies, and especially after the Judgment described in (1) above, the number of opinions adopted increased to reach 331 as of March 5, 2022<sup>6</sup>.

(3) Decision of the Grand Bench of the Supreme Court of June 23, 2021, etc.

In this case, the appellants had made a notification of marriage, making an entry to the effect that “the husband adopts his surname and the wife adopts her surname” in the notification form, but had received a disposition of non-acceptance from the city mayor, and therefore, they filed an appeal to seek an order to accept such notification of marriage according to Article 122 of the Family Register Act, claiming that it was an unjust disposition.

The decision of the Grand Bench of the Supreme Court of June 23, 2021 (hereinafter referred to as the “Decision”)<sup>7</sup> held that “the provisions of Article 750 of the Civil Code are not in violation of Article 24 of the Constitution, as held in the judicial precedent of this Court,” making its second judgment to the effect that Article 750 is constitutional, and ruled that the provisions of Article 74, item (i) of the Family Register Act, which specify the surname that a husband and wife take as a matter to be necessarily entered in a written notification of marriage in response to the provisions of Article 750 of the Civil Code, are not in violation of Article 24 of the Constitution.

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choose the one/ones you agree with. (Multiple answers allowed),” providing the following four choices: “1. The sense of unity as a family would be lost and sound growth of the child/children would be hindered,” “2. The child/children would feel uncomfortable or anxious with respect to their relationship with the parent who has a different surname,” “3. The child/children may experience a psychological burden on interpersonal relationships, such as an unpleasant feeling, when some friends point out that his/her surname is different from that of a parent,” and “4. Other.” These questions are likely to give a negative impression about the optional separate surname system.

For this Survey, there is criticism that “The opinion poll should be redone as soon as possible if it is to be used to consider the system. They should either use the same questions as with past polls so that the change over the years can be measured or change the content of the questions drastically to prevent image manipulation.” (Ninomiya Shuhei: “Optional separate Surname System and Opinion Polls - the Problem with the Changed Question,” *Koseki Jiho* No. 825, p. 10, May 2022).

Further, after the release of the Survey, Ms. Noda Seiko, the Minister of State (for Regional Revitalization, Measures for Declining Birthrate and Gender Equality) in Charge of Women’s Empowerment, Policies Related to Children and Measures for Loneliness and Isolation was also critical because of a gap with reality, and so on (Asahi Shimbun: “Survey on Optional Separate Surnames: ‘Gap with Reality’ Says Ms. Noda Seiko, Pointing out the Change of Questions and Generational Bias” (March 25, 2022). <https://www.asahi.com/articles/ASQ3T6DVXQ3TUTFK01F.html>)

<sup>6</sup> Optional Separate Surname System - Nationwide Petitioning Action: “Situation of Written Opinions Adopted Nationwide”

<https://chinjyo-action.com/area/>

<sup>7</sup> Decision of the Grand Bench of the Supreme Court of June 23, 2021 (Case No. 2020 (Ku) 102)

[https://www.courts.go.jp/app/hanrei\\_en/detail?id=1824](https://www.courts.go.jp/app/hanrei_en/detail?id=1824) (English)

[https://www.courts.go.jp/app/files/hanrei\\_jp/412/090412\\_hanrei.pdf](https://www.courts.go.jp/app/files/hanrei_jp/412/090412_hanrei.pdf) (Japanese)

As a dissenting opinion to the Decision, two justices pointed out in relation to Article 13 of the Constitution that “The personal interests concerning a full name argued in this case (omitted) are included in the personal interests (omitted) and are rights related to one aspect of an individual’s personality that forms the basis of respect for individuals and individual dignity. Therefore, they are considered to be guaranteed under Article 13 of the Constitution” (Opinion of Justice Yuko Miyazaki and Justice Katsuya Uga), and one justice pointed out that “interests pertaining to the maintenance of a pre-marriage surname at the time of marriage can be considered as an individual’s important personal interests, leaving aside the issue of whether or not they are guaranteed as constitutional rights” (Opinion of Justice Mamoru Miura). Further, four justices found that Article 750 of the Civil Code violates Article 24, paragraphs (1) and (2) of the Constitution, among which, Justice Mamoru Miura pointed out that “if either of the two persons is required to waive his/her important personal interests when they make a decision that has a significant meaning regarding the pursuit of their happiness as individuals, i.e., marriage and no exception is allowed to this requirement, this must be considered to be a substantial restriction imposed on a free decision in light of the requirement for individual dignity” and “as a practical matter, the same surname system clearly has the effect of causing disadvantages to women and is causing an extreme imbalance in terms of the substantial equality of the sexes. I must say that the restriction on the freedom to marry is a burden that is more close to compulsion for women who do not wish to change their surnames at the time of marriage.”

In response to this Decision, the JFBA released a statement<sup>8</sup> and an opinion<sup>9</sup> strongly urging the Government to immediately amend Article 750 of the Civil Code and introduce an optional separate surname system.

On March 23, 2022, in a case argued by the Third Petty Bench of the Supreme Court on whether the provisions of Article 750 of the Civil Code and Article 74, item (1) of the Family Register Act, which do not allow married couples to have separate surnames, violate the Constitution or not, two of the five justices expressed their

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<sup>8</sup> JFBA: “Statement Calling to Amend Article 750 of the Civil Code to Introduce a Discretionary Separate-surname Retaining System on the Occasion of the Pronouncement of Ruling by the Supreme Court’s Grand Bench” (June 25, 2021)

<https://www.nichibenren.or.jp/en/document/statements/210625.html> (English)

<https://www.nichibenren.or.jp/document/statement/year/2021/210625.html> (Japanese)

<sup>9</sup> JFBA: “Opinion on the Introduction of a Discretionary Separate-surname Retaining System” (August 19, 2021)

<https://www.nichibenren.or.jp/en/document/opinionpapers/210819.html> (English Summary)

<https://www.nichibenren.or.jp/library/pdf/document/opinion/2021/210819.pdf> (Japanese)

opinion to the effect that the provisions are unconstitutional<sup>10</sup>.

### 3. Women's Political Participation

On February 3, 2021, the then President (hereinafter referred to as the "Former President") of the Tokyo Organising Committee of the Olympic and Paralympic Games (hereinafter referred to as the "Organising Committee") made remarks during an extraordinary meeting of the Japanese Olympic Committee held on the said day to the effect that "A meeting of an executive board that includes many women would take time" and "they (women members of the organizing committee) all know how to behave," in relation to the topic of achieving the target share (at least 40%) of female board members<sup>11</sup>. The International Olympic Committee criticized the abovementioned remarks as totally inappropriate, and the remarks were criticized both domestically and internationally.

The fact that the Former President, who has served as a Diet member for many years and was once also the Prime Minister, made the abovementioned remarks is considered closely related to the slow progress in achieving gender equality through women's participation in society including the political arena. The aforesaid remarks indicate that deeply-rooted gender role attitudes and discriminatory beliefs, such as that men should assume the role of decision-making of important matters and that women should not intervene, still survive in Japanese society, and such attitudes and beliefs can be said to hinder women's participation in leadership roles and, by extension, prevent women from achieving success<sup>12</sup>.

On March 31, 2021, the World Economic Forum announced the Global Gender Gap Index, an index designed to measure the degree of gender equality of countries around the world, and Japan ranked 120<sup>th</sup> among 156 countries, and 147<sup>th</sup> in the political arena, which were the lowest among the G7 countries<sup>13</sup>.

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<sup>10</sup> NHK: "Cases on Surnames of Married Couples – The Supreme Court Dismissed the Appeals in Two Cases in Tokyo and Hiroshima" (March 23, 2022)

<https://www3.nhk.or.jp/news/html/20220323/k10013547641000.html>

Asahi Shimbun Digital: "Sense of Unity of Family without Same Surname – Supreme Court Justices Expressed Opinion to Accept Optional separate Surnames" (March 23, 2022)

<https://www.asahi.com/articles/ASQ3R5KFHQ3RUTIL03J.html>

<sup>11</sup> Sports Nippon: "Full Text of the "Sexist" Remarks of President Mori Yoshiro on the 3<sup>rd</sup>" (February 4, 2021)

<https://www.sponichi.co.jp/sports/news/2021/02/04/kiji/20210204s00048000348000c.html>

<sup>12</sup> JFBA: "Statement Disallowing Gender Discrimination and Promoting the Realization of Equal Participation by Men and Women" (February 19, 2021)

<https://www.nichibenren.or.jp/document/statement/year/2021/210219.html>

<sup>13</sup> Global Gender Gap Report 2021

In this regard, the Act on Promotion of Gender Equality in the Political Arena (hereinafter referred to as the “Candidates Equality Act”) was enacted and enforced on May 23, 2018 to realize women’s social participation in the political arena, but Article 2, paragraph (1) of the Act imposes on political parties, etc., merely the obligation to make efforts, stipulating, “the promotion (omitted) is to be undertaken with the aim of making the numbers of male and female candidates as even as possible in the elections of the members of the House of Representatives, the House of Councillors, and the councils of local governments, while securing the freedom of political activities, such as the freedom of selection of candidates of political organizations such as political parties, or the freedom of candidacy of candidates.”

On June 16, 2021, the Candidates Equality Act was amended to stipulate matters concerning the development of an environment that facilitates candidacy and activities of Diet/assembly members for both men and women, setting of target numbers of male and female candidates, as well as improving the method of selecting candidates, human resource development, and measures to prevent the occurrence of problems arising from sexual harassment and speech and behavior related to pregnancy or childbirth, etc.

In the first election of the House of Representatives held after the enforcement of the Candidates Equality Act (held on October 31, 2021), while 186 women ran for single-seat constituencies and the proportional representation system, female candidates accounted for only 17.7% of the total 1,051 candidates, remaining at the same level as in the 2017 election, and no increase in female candidates was achieved. Furthermore, the number of female Diet members elected in the election was 45, accounting for 9.7% of the total 465 members, which was a further decrease from 10.1% in the 2017 election<sup>14 15</sup>. In order to promote women’s political participation in the future, there is an urgent need for further efforts including legislation implementing a quota system<sup>16</sup>.

In order to promote women’s participation in the political and economic fields and

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<https://www.weforum.org/reports/global-gender-gap-report-2021>

<sup>14</sup> Ministry of Internal Affairs and Communications, Local Administration Bureau, Election Department: “Results of the General Election for the House of Representatives and the National Review of Supreme Court Justices Held on October 31, 2021” (November 9, 2021)

[https://www.soumu.go.jp/main\\_content/000776531.pdf](https://www.soumu.go.jp/main_content/000776531.pdf)

<sup>15</sup> NHK Politics Magazine: “Is It Bad to Have More Women? - from the 2021 House of Representatives Election -” (November 10, 2021)

<https://www.nhk.or.jp/politics/articles/feature/71681.html>

<sup>16</sup> JFBA: “Statement on the Gender Gap Index Published by the World Economic Forum” (April 22, 2021) <https://www.nichibenren.or.jp/en/document/statements/210422.html>

improve the Gender Gap Index of Japan, it is imperative to further strengthen efforts to eliminate gender stereotypes and gender discrimination in all areas of society.