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FEMALE EMPLOYMENT IN JAPAN AND THE FAILURE OF THE EQUAL EMPLOYMENT OPPORTUNITY LAW

Introduction

Deeply engrained within Japanese society is the perception that women's work is limited to motherhood and her role as a wife. The ideal of "*ryosai kembo*", which means "good wife, wise mother", was a national slogan that arose during the Meiji period. This ideal is one that still captures prevailing societal perceptions and expectations of what a Japanese woman should aim to become and her value within society. Although women were confined to the home and thus limited in their educational pursuits, the end of the Meiji period also brought about a push to eliminate illiteracy among all family members. This push resulted in increased access to educational opportunities for women. While females were finally receiving an education, there arose need to address the lack of equality of females in the workforce. Japanese women workers were limited to jobs that were categorized as an extension of their household duties, this was particularly seen in the job of pink collar workers. It wasn't until World War II that women in Japan were mobilized as workers and truly the ones who helped maintain the Japanese economy (Kusago 79). While the idea of woman as workers who could support Japan outside the home was met with ambivalence by the Japanese government, it led to significant change and "for the first time in history women were granted equal rights with men under the new constitution of 1946" (Lam 7).

Over the years, women slowly began to increase their level of involvement within the workforce, but this proved difficult. In order to increase equality at work, the Equal Employment Opportunity Law (EEOL) was passed with the goal of "[improving] women's economic prospects by helping them to gain access to those jobs and career paths from which they were formerly excluded" (Edwards 218). While the EEOL touted equal opportunity for both genders, the lack of women in managerial roles and the creation of a two-track system, among other things, points to

flaws within the law. In this paper, my ultimate aim is to demonstrate that the EEOL failed to help women gain access to jobs from which they were formerly denied. In order to do this, I will focus on the events leading up to the passage of the EEOL, the law itself, its impact on female employment, and current policy action being taken by the Japanese government.

Before the Passage of the Equal Employment Opportunity Law

Prior to the passage of the EEOL policies that addressed equality in the workplace were already in existence. Article 14 within the Japanese Constitution explicitly prohibited discrimination in “political, economic, and social relations based on race, creed, gender, social status, or family origin” (Bennett 153). This anti-discrimination article addressed gender-based discrimination but the implementation of other policies aimed to explicitly recognize the limited protection that female workers received. In 1947 Japan passed the Labor Standards Law demanding equal pay for men and women (Edwards 218) but women were still excluded from jobs that were predominantly held by men. In this case, the law failed to address gender in Article 3, which stated that employees could not be discriminated in wages and working hours. Ultimately, Article 3 only recognized nationality, creed, and social status as markers by which individuals could not be discriminated against (Bennett 154).

Although these laws attempted to alleviate women’s lack of opportunity, many actually hindered the advancement of women. Within the Labor Standards Law, provisions existed that made it difficult for women to advance at work. Women were restricted to a maximum of 2 hours of overtime work per day, 6 hours per week, and 150 hours per year (Bennett 154). These restrictions did not exist for men. Eventually, while these restrictions were amended by the Labor Standards Act Amend of 1985 (Bennett 154), they were not strictly enacted nor were there consequences when businesses failed to meet the laws. In the case of the EEOL, we will also see how a lack of enforcement contributed to its limited impact and thus failure.

Movement towards Change

Although Article 14 of the Japanese Constitution articulates that gender-based discrimination is essentially illegal, it was the international climate centered on women’s rights that helped push Japan to pass the EEOL. In the 1970’s and early 1980’s the United Nation’s focus was heavily on women’s issues (Fan 114). The passage of the U.N Convention Concerning the

Elimination of All Forms of Discrimination against Women, required that states “take all appropriate measures, including legislation, to modify or abolish existing laws, regulation, customs, and practices which constitute discrimination towards women” (Fan 114). The EEOL was Japan’s response to the UN Convention, but upon further analysis of the law, it seems that the EEOL was merely a band aid solution made to appeal to the current international agenda of that time.

Regardless of the international climate which made its passage favorable, the law was still controversial and it was met with criticism by businesses and male employers (Po 81). As previously noted, women in Japan are expected to care for the home, their husband, and children. Men became fearful that by increasing women’s participation in the workforce, the value of their work would decrease. This was further embedded in the belief that women were not skilled enough to take on work within a predominantly male sphere. Backlash was also heavily due to concern that women were giving up their societal duty (i.e domestic responsibilities) and people feared that “equality in employment would mean the end of [the] pillars of postwar growth and social stability...” (Fan p116). In the end, the law was viewed as a compromise between “international expectations and what the business community was willing to accept” (Fan P117). Further criticism of the law by females and businesses will be explored in later sections.

Before delving into the specifics of the EEOL, criticism of the law, and its flaws, it is important to recognize that the EEOL aimed to equalize conditions for women in the workplace but failed to address women’s role within society. From the outset, even its drafters “recognized that the act would ‘fall short of full equality’ because of the reality of women’s responsibilities for home and family” (Gelb 397). Even if women were able to work more hours, they have grown up under the impression that their work is limited to the home, these societal norms and expectations were an area that policy failed to address.

The Equal Employment Opportunity Law of 1985

The EEOL was passed in 1985 and implemented in 1986 (Gelb 385). The law prohibited gender discrimination in “vocational training, fringe benefits, retirement, and dismissal” (Edwards 217) and it “encouraged firms to provide equal opportunity with regard to recruitment, hiring, job assignment, and promotion” (Edwards 217). The law was divided into 2 sections: prohibitions, which explicitly declared discrimination illegal and recommendations, where firms were

“encouraged” – but not required- to provide equal opportunity. In this case, the language used demonstrates one way the enactment of the law proved to be difficult. The law also failed to provide penalties for those who did not comply and guidelines provided by the Ministry of Labor were not enforced (Edwards 218). Essentially the law was based on voluntary compliance and given Japan’s concern with allowing women to enter into the field, this resulted in continued discrimination of women in the workforce. This was specifically seen with the rise of the two-track system and the institute of lifetime employment which was already in place.

EEOL’s Impact on College Enrollment

Although the EEOL had its setbacks, after its passage there was an increase in the number of females who pursued higher education opportunities at four year universities (Edwards & Pasquale 2). After high school females were faced with options that included: going into the labor force, 2 year junior college, vocational school, college prep programs, or 4 year university (Edwards & Pasquale 4). A majority of women typically enrolled in junior college, which were 2 year programs limited in subject matter. Junior college was viewed as a way for women to prepare to become good wives and mothers. Their course load was limited to subjects such as music, home economics, and literature (Edwards & Pasquale 5). This type of education, was not preparing women to go into the work force.

While studies recognize that there are a variety of factors that influence whether or not an individual pursues higher education, the years following the passage of the EEOL saw an increase in the number of females who opted for 4 year college. In 1980 only 22.4% of females attended 4 year college; in 1990 that number increased to 27.9% and 35.6% in 1998 (Edwards & Pasquale 3). This should have resulted in an increase of female workers because individuals who graduate from a university are much more prepared for the workforce. Graduates are “more likely to get promoted into higher level management jobs and are more likely to be hired by the larger firms” (Edwards & Pasquale 5). Attendance at a 4 years university meant that women were paving a path to pursue higher level careers.

In this respect, the EEOL brought about positive change by indirectly encouraging women to obtain a higher education and increasing their career expectations (Edwards & Pasquale 31). But the question still begs, even though more women were attending and graduating from a university, was there any change in the type of jobs they were able to obtain after graduation?

Female graduation rates and the reality of their particular field of employment are two separate things that when analyzed, demonstrate the lack of change that the law brought about. This was specifically evident by the non-existent number of women in managerial roles and women's confinement to clerical positions. Before the EEOL was passed 140,000 females worked in managerial roles, this increased to merely 190,000 in 1990 (Bennett 171). Barriers such as lifetime employment, the two-track system, societal expectations of women, and the three-tiered grievance system more than likely contributed to the limited increase of females in these male-dominated positions.

Lifetime employment

In terms of lifetime employment, Japan operates under a system where college graduates typically retire from the company they entered right out of college. This system makes it difficult for individuals to find work if they leave their company since they are hired right out of college. Furthermore, the lack of mid-career mobility makes it difficult for women who choose to have children and desire to re-enter the work force once their children are older. Ultimately, the existence of this system led many to believe that the impact of the EEOL would be weak (Edwards 219). In addition, the EEOL did not explicitly prohibit age discrimination, therefore it was not against the law for women to be denied work if they were not recent graduates or if they were above the age of 30-35 (Edwards 219). In order for the EEOL to have had a greater impact it would have needed to tackle an institution that had already been in existence for years.

Two Track System

Upon the passage of the EEOL, many businesses responded to the law by implementing a two-track system. According to the Foundation for Women's Work, they surveyed "...148 large firms in 1987 and found that 40 of the firms used a multiple track system. Of these 40, 24 or 60 percent had adopted the system in 1986 or 1987, whereas the remaining 40 percent had adopted it earlier" (Edwards 229). Although the two track system existed prior to the Law's passage, the EEOL resulted in an increased use of this system as a way to avert the law.

As its name implies, the two-track system creates two "tracks" for college graduates: the managerial employee track, known as "*sogoshoku*" and a clerical employee track known as "*ippanshoku*" (Edwards 229). The managerial employee track involves higher level work and

involves a job rotation system, where employees are required to relocate for their jobs. The clerical employee track is limited in mobility, limited in hours, and it was perceived as a “mommy track” of sorts (Gelb 390). Employees are placed into these tracks by the company, therefore there is freedom regarding who the company chooses to place where. As a result, companies have been able to “abide” the EEOL by placing women in the clerical track. In a sense they are creating opportunity for women in the workforce, but they limit this opportunity by restricting women to a clerical track.

Even three years after the EEOL’s implementation, the two track system inhibited women from obtaining managerial roles. The managerial track in itself, is tailored for men. The job rotation system also makes it difficult for women who have families because they are unable to relocate as easily as men. While relocation can be difficult for men with families, they are able to move knowing that their wife will care for their family. This is also a reason why companies continue to overlook female applicants. There is a societal expectation that once a woman marries she will leave her job. While some women may continue to work after marriage, they are ultimately expected to leave once they become pregnant. It is under this pretext that businesses are able to justify placing women in a clerical track. A woman’s limited mobility is thus due to the fact that most women will end up leaving the company after a few years. In 1989 the Basic Survey on the Management of Female Employment released statistics demonstrating the limited number of females in managerial roles. “In the surveyed firms, women comprised 5 percent of supervisors, 2.1 percent of section heads, and 1.2 percent of department managers” (Edwards 230). Surveyed firms also revealed that many of them did not expect to increase their number of female employees, nor did many firms report that they would be adjusting the “working environment” in order to become more inclusive of females in managerial roles (Edwards 230).

This outright negativity towards the 1985 EEOL was proof that the law was not being taken seriously and evidence that its impact would not be strong unless enforcement measures were taken- none of which ever were. Two years after the 1989 Basic Survey, a report by the Malaysia International Trade and Industry Report (Edwards 230) confirmed that women in the workplace were still not considered equals to their male counterparts, specifically due to the rise of the two track system. Although some women were able to obtain managerial positions, those who did faced discrimination in terms of the tasks they are asked to complete. Unfortunately, this form of

circumventing the law was deemed acceptable, became widespread in practice, and still exists today.

Further Barriers

In addition to these systems that were already in place or increased after the EEOL's passage, the law made it difficult for women to file complaints against their employers. The process consisted of a three tiered grievance procedure where an employee was required to use the "complaint resolution mechanism established by her employer" (Bennett 156). If the issue was still not resolved after using the employer's resolution system, the Ministry of Labor was called-in to help and an EEOL mediation commission was brought in upon agreement by both the employer and the employee (Bennett 156). This process was not only time consuming but it placed women in a difficult situation. Japanese women are taught to be respectful of their elders and supervisors, therefore the act of going against their employer was a foreign concept and many women may have been hesitant file a complaint. Even if a woman felt comfortable filing a complaint, the process was lengthy and mediation only took place if the employer also agreed. In the long run, the three-tiered complaint system served more as a barrier than a source of help to working woman.

Lack of Enforcement and the Result

The institutions of lifetime employment and the two track system were largely able to flourish due to the law's generalized guidelines, recommendations, and the lack of penalties for non-compliers. Moreover, the EEOL and policies prior to it did not clearly define "discrimination". The ambiguity around what "discrimination" entailed made it so that practices deemed discriminatory varied depending on what was ruled during court (Bennett 164). For example, in the case of Suzuki v. Sumitomo Cement Co., a female employee filed a complaint against her employer for requiring that she retire upon marriage. The court ruled in favor of the woman and declared the company practice to be "contrary to public policy" (Bennett 164). While this one case favored women, it was not taken into consideration in later court cases where discriminatory policies or actions by businesses were not declared illegal.

Furthermore, the EEOL did not include any guidelines regarding action-steps to confront organizations who failed to meet the law's standards and goals. Businesses were merely

“encouraged” to create opportunities for women and in some cases provided with a recommendation by the Ministry of Labor. When the Ministry of Labor would intervene in a situation, their recommendation was merely that, given that companies were not required to enact any change if they were opposed. The overall failure of government administrative guidance was cited as a contributing factor to the continued discrimination of women in hiring and promotion practices (Edwards 210). In addition, discrimination was also evident in job advertisements. Companies were not allowed to explicitly recruit men, but “women only” ads were permitted and perceived as a way to increase opportunity for females. Essentially, even if a job was “70% male and 30% female, [it was] seen as legitimate because women [were] not excluded” (Gelb 395). The EEOL was contingent on including women in the work place at any capacity- a capacity which was to the discretion of the company.

1997 EEOL Revision

In order to strengthen the provisions already included in the 1985 EEOL, the law was revised in 1997. These revisions specifically aimed to address continued sex-based discrimination in the workplace, along with mounting concern around sexual harassment. The revisions to the law specifically prohibited “discrimination in recruitment, hiring, assignment, and promotion” (Barrett 2) something which was merely “encouraged” by the 1985 EEOL. In order for businesses to take this sanction more seriously, enforcement of the law was enacted by ordaining “sanctions for violations of the law” (Barrett 2). In the past, when an employee filed a complaint against their employer, the Ministry of Labor advised employers on how to proceed, a recommendation which the employer did not have to enact. In the 1997 revision, the Ministry of Labor is subject to make “a public announcement” regarding gender based discrimination if an employer fails to enact their recommendation. The main reasoning behind this tactic, is that in order to avoid public embarrassment, companies will more likely take the Ministry’s recommendation seriously and make the necessary changes to create a just work environment for women. In regards to sexual harassment, the 1997 revision explicitly added a protection against sexual harassment in the workplace. Article 21 of the 1997 EEOL states that “employers shall give necessary consideration....so that women workers they employ do not suffer any disadvantage in their working condition by reason of [their] responses to sexual speech and behavior... and their working environment do not suffer harm due to said sexual speech and behavior” (Barrett 2).

Impact on Female Employment

Despite the 1985 law's lack of enforcement and the rise of the two track system, the number of females in the workforce greatly increased from 15.4 million in 1985 to 20.8 million in 1996 (Barrett 2). This increase, although modest, was attributed to the push that companies felt to increase their number of female workers. Unfortunately, although more women entered the labor force the two track system limited female employment to clerical roles. And while the law brought about awareness regarding discrimination of females in the workforce, this discrimination still remains apparent by the lack of women in managerial positions decades after the law's passage. A 2012 report by McKinsey & Company demonstrated that "women account for 49% of university graduates in Japan, and women hold 45% of entry level positions" but in terms of higher level positions only 11% of females are in "mid-to-senior management positions" and 1-2% hold positions as Chief Executive Officers or on company boards (Kalus- Bystricky, "To succeed, Abenomics Must Empower Women- A Pax World White Paper.").

Moving beyond females in leadership roles, even after the 1997 revision there were instances of discrimination among females who continued to work after marriage or continued to work after giving birth. In the case of the Sumitomo Life Insurance Company, female workers were "berated" and the quality of their work was criticized, merely because they had continued to work after marriage (Barrett 3). The harassment of women who continued to work after marriage was eventually disallowed in 2001 by the Osaka District Court. Even though the Court addressed this issue, instances of discrimination against females who marry and give birth are still in effect.

In the 2011 documentary "Mothers Way, Daughter Choice" director Kyoko Gasha not only reveals that females in Japan don't believe that their work conditions have improved but women who get pregnant still face discrimination in their jobs. Keiko, a friend of Kyoko and a deputy editor at her company, notes that if she were to take maternity leave this would result in a demotion. While Keiko's position of "Deputy Editor" demonstrates that she was able to move up within her company, the fact that she knows she would be demoted depicts the continued difficulties of women who enter the workforce. Regardless of the impending demotion, Keiko decided to have a child and she was demoted from Deputy Editor to an entry-level position. According to Keiko, "This attitude discourages women from having children. It creates a negative image of motherhood." It is important to note the perception of current working conditions by Japanese

women. A look into this demonstrates that not much change resulted from the passage of the EEOL or its later revisions. This should point to government officials that policy measures still need to be enacted to level the playing field for women. The fact that women are still discriminated against once they decide to have children, further points to the need to address societal expectations of women. Although this would require a shift in the Japanese mindset regarding women's value in society, it appears that these are the types of conversations that need to take place in order for policy to be effective.

Current Policy Action: Abenomics

As evidenced by the 1985 and 1997 EEOL, policy measures have been taken to improve the conditions of females in the workplace and to increase the number of female workers. According to a 2012 McKinsey report, given the low number of women in managerial roles in Japan, there is a need for better policy. The most recent push for females in the work place, has taken shape under Prime Minister Shinzo Abe's aggressive policy move to improve the Japanese economy. Dubbed Abenomics, Abenomics is the policy stance of Prime Minister Abe which is based on three key pillars: monetary policy, fiscal stimulus, and structural reform (Sakuma 2). In addition to these pillars Abe's has placed a large emphasis on the need for females in executive positions because he recognizes that "women are Japan's most underused resource" (Covert, "Abenomics Will Boost Japan's Economy By Helping Its Women Workers."). In order to increase the number of females in executive roles, Abe's platform includes "Niimaru, Sanmaru (20,3): a proposition to increase the percentage of women in leadership positions in the workforce to more than 30% by 2020" (Noda "Abenomics: A Strategy for Growth Is to Utilize the Female Workforce." *The Huffington Post*.). In order to do this Abe has asked businesses to "set a target of at least one female executive per company" (Covert "Abenomics Will Boost Japan's Economy By Helping Its Women Workers.") and he has "promised to create 250,000 day care openings" as a way to increase the number of working mothers (Covert "Abenomics Will Boost Japan's Economy By Helping Its Women Workers."). Proposals have also been made to offer tax incentives to businesses for "achieving gender diversity and encouraging [employers] to empower women through mentoring and career advancement" (Kalus-Bystricky "To succeed, Abenomics Must Empower Women- A Pax World White Paer.").

Although Abe's policy may seem ambitious, studies demonstrate that there is a need for more female workers, specifically as a way to help boost the economy. In a study by Kathy Matsui, chief Japan equity strategist at Goldman Sachs Group Inc, Matsui noted that "increasing the female workforce participation rate to 80%, the same as the male participation rate, would add 8.2 million people to the workforce and as much as 14% to Japan's GDP" (Kalus-Bystricky "To succeed, Abenomics Must Empower Women- A Pax World White Paper."). Based off of these statistics, it proves economically necessary and savvy that government efforts be taken to increase the number of female workers.

While Abenomics has been lauded for what it aims to do, there are still concerns regarding whether it will result in tangible and real change for females. Concern is largely embedded in that fact that business and cultural norms may hinder the success of Abe's proposed policy. While increasing day care centers, may help mothers feel more at ease in returning to work, there is a need for conversations regarding the role women and men should play in the rearing of a child. Furthermore, this is a need for policy to tackle the established cultural norms of females in the office setting. Tackling these established norms has proven to be a barrier in the past as evidenced by the EEOL's failure. It is my hope that policy makers are able to see this and take strides towards opening the dialogue in regards to how women are being valued within Japanese society.

Conclusion

While women in Japan have been valued for the roles they play within the household, the rise of the Equal Employment Opportunity Law resulted in increased numbers of females in the workforce. It also boosted the number of females that enrolled in college, thus paving the way for females to become active participants in the workforce. Despite the passage of the EEOL of 1985, there were many barriers that hindered the full scope of impact the law could have had. With the passage of the law came an increased use of the two-track system and the existence of life time employment which made it difficult for women to continue working once they married or gave birth. Many of the EEOL's failures proved to be due to the lack of its enforcement and its inability to tackle a deeper social issue- that of woman's perceived role in society. These failures are largely evident by the lack of females in managerial and executive roles within businesses and the discrimination that women still face when they decide to marry and have children. The EEOL's failure is further demonstrated by current policy that aims to increase the number of female

managers in the work force. Although Abenomics has yet to prove effective given its recent implementation, it is a step in the right direction in order to make sure women are being included in higher paying positions.

As I previously mentioned, beyond policy, there will also be a need for the government to address the social and cultural norms that have made it so difficult for women to succeed within the business sector. Given that this is a concern surrounding Abenomics, it is my hope that government officials take note and make the necessary changes in order for future policy to be able to make a more tangible impact than policies past such as the EEOL.

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