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EQUALITY VS. DIFFERENCE: A CASE STUDY OF JAPANESE MEDIA REPRESENTATIONS OF GENDER-SPECIFIC PROVISIONS IN LABOUR LEGISLATION

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This paper focuses on gender-specific provisions in Japanese labour legislation, and how they were presented in the media.[1] It uses as a case study the removal of the Labour Standards Law's women's 'protection' provisions in the late 1990s. This paper first outlines Japanese social issues in the 1990s, then introduces the law, its amendments and the media response to these amendments, before closing with a statistical evaluation.

In the 1990s, there were significant social problems in Japan. The announcement of the 1989 fertility rate of 1.57 births per woman in Japan sparked large-scale media concern. Following this, issues such as the greying population, *karōshi* (death from overwork) and the role of women in both society and the workplace, among others, gained large amounts of attention at the close of the twentieth century. Many of these issues can be seen as being either symptomatic of, or exacerbated by, gender inequality in society.

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1 This paper was presented to the 18th Biennial Conference of the Asian Studies Association of Australia in Adelaide, 5-8 July 2010. It has been peer reviewed via a double blind referee process and appears on the Conference Proceedings Website by the permission of the author who retains copyright. This paper may be downloaded for fair use under the Copyright Act (1954), its later amendments and other relevant legislation.

In an attempt to resolve many of these issues, the Japanese government undertook various measures. The measures were a combination of ministerial plans (such as the Angel Plan, which aimed "to give support to childrearing from a 'comprehensive social perspective'."[2]), new legislation (such as the Childcare and Family Leave Law (1992) or the Basic Law for a Gender-Equal Society (1999)), and amendments to existing legislation (such as the Equal Employment Opportunity Law (1985, revised 1997) or the Labour Standards Law (1947, amended 1997)). This paper focuses on the amendments made to the Labour Standards Law, and the media reaction to those amendments.

The Labour Standards Law was one of several laws passed during the post-war occupation of Japan. At the time of its passing, it was hailed as being modern, comprehensive, and even more advanced than the contemporary International Labour Organisation recommendations. The Labour Standards Law legislated gender equality – however it also legalised gender difference. Equality between men and women in the workplace was legalised through Article 4, which guaranteed equal pay for equal work. But it was getting equal work which was the problem, due to the legalised difference of women workers that was codified through a series of Articles known as the *josei hogo kitei* (commonly translated as the women's 'protection' provisions).

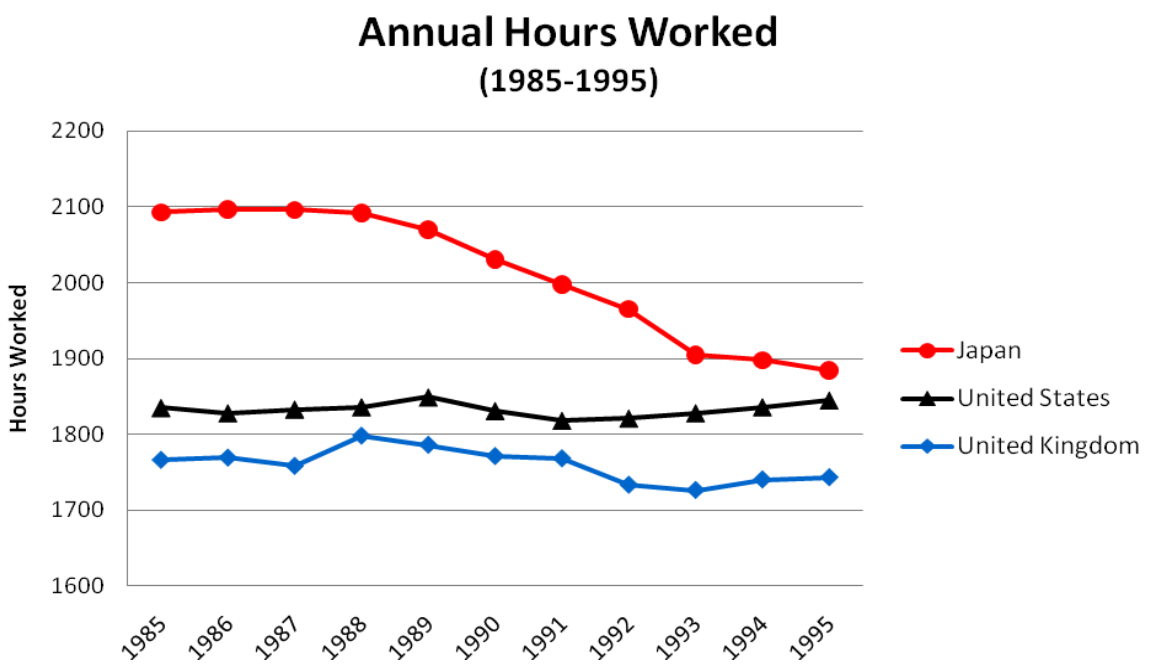
These gender-specific provisions can be split into two groups. The first group of provisions, Articles 65-7, address the biological realities of pregnancy and are commonly referred to as *bosei hogo kitei* (motherhood 'protection' provisions). They apply to expectant and nursing mothers, and are similar to those found in labour legislation throughout the industrialised world. Though these Articles have largely proved uncontroversial, Article 68, which allowed women time off work per month for 'menstruation' leave, is an interesting peculiarity.[3] Strongly lobbied for in post-war Japan when the poor sanitation facilities available prohibited women from dealing with their periods hygienically when they were at work (or out in public generally),[4] menstruation leave was reclassified in the 1980s to become part of the 90 days sick leave available to all workers annually in Japan.[5]

The other group of Articles, and affect *all* female workers. These are the ones normally referred to

2 Roberts, 'Pinning Hopes on Angels,' p. 57.
3 Sugeno, *Japanese Labour Law*, pp. 313-4.
4 See Molony, 'Equality versus Difference', pp. 135-9 for more information.
5 *'Yappari Torenai? 'Seirikyūka' 'Shirareru no ga iya' Nennen Genshōsuru Shinseiritsu* (Hard to Take, After all? "Menstrual leave" "Don't Want Anyone to Know About It": Application Rates are Decreasing Annually)' *Yomiuri Shinbun*, morning edition, June 7, 1999.

under the term women's 'protection' provisions, and are controversial. Article 61 set stricter overtime limits for women as opposed to their male colleagues, Article 62 prohibited women from working between 10pm and 5am, and Article 63 forbade women from working in 'dangerous' occupations such as mining. When the Equal Employment Opportunity Law was implemented in 1986, few changes were made to these provisions – though they were relaxed for some occupations.[6] Some occupations, such as nursing, have never been affected by these provisions, but the vast amount of working women in Japan have been affected. It is the removal of these provisions that were the main amendments made to the Labour Standards Law, and the media focus on this removal is the focus of this article.

The reason that these provisions were so strongly debated within the Japanese media was a lack of consensus as to their role. While some viewed these provisions as restrictive, others saw them as protective. In this context, it helps to examine Japanese working habits in the 1990s: as the decade dawned, the Japanese worked some of the longest hours in the working world. Before the removal of the Provisions, women in Japan were restricted to 150 hours overtime per annum, while their male colleagues could work 360 hours overtime per annum.[7]



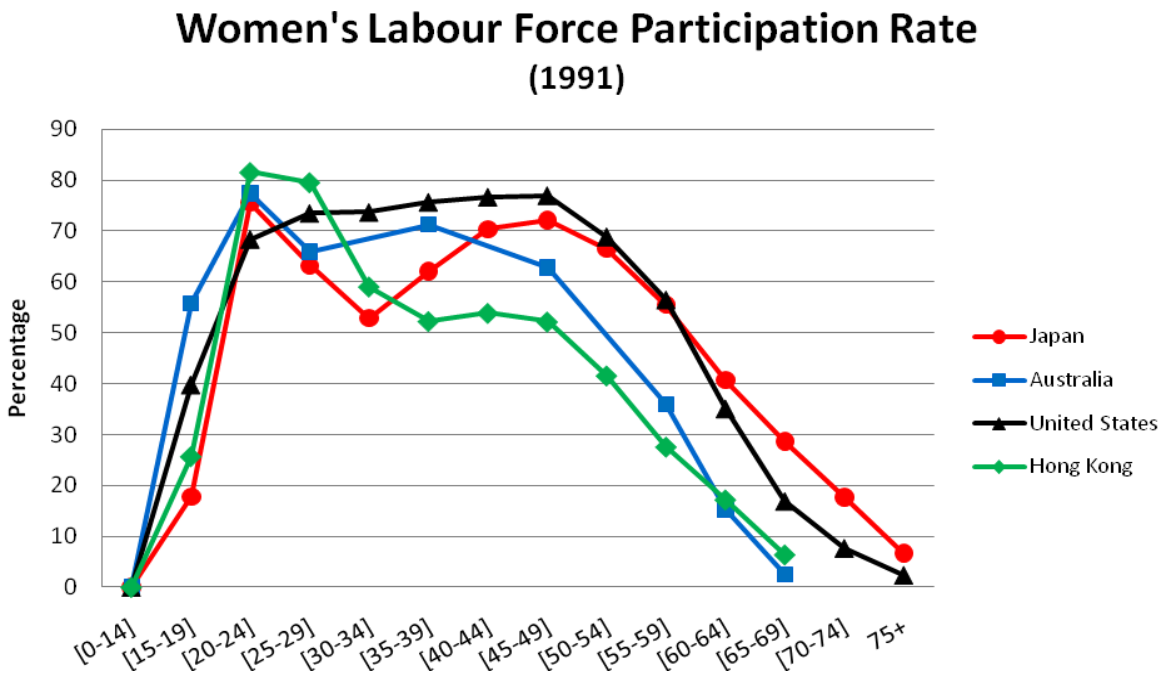
Source: OECD Statistics Database, "Dataset: Average annual hours actually worked per worker", extracted 4 June 2010.

6 See Mackie, 'Gendered Discourse' or Upham, *Law and Social Change in Japan* for further details.

7 '*Josei nimo Shinyakimu Hogokitei Teppai Yōkyūe Shōshin ・Saiyō ni Michihiraku Jidōsha Shōren ga Hōshin* (Calls for the Complete Abolishment of the Women's Late Night Work Prohibition and Protection Articles)' *Yomiuri Shinbun*, morning edition, August 2, 1995.

Many men actually worked more hours than this, causing Japanese workers to have significantly longer working hours than their American or British counterparts. The widely-known image of the Japanese *sararīman*, a workaholic slave to his company, was really rather accurate in those years.

For women in Japan, the employment pattern was very different. Although forced retirement upon marriage or childbirth had been made illegal under the Equal Employment Opportunity Law, it remained a prevalent trend in early 1990s Japan. The Japanese Women's Labour Force Participation Rate graph is known as the 'M-shaped Curve' due to its shape – young women enter employment when they complete their schooling, then retire when they marry or have children, then re-enter the workforce in lower numbers as their children enter school. While this curve is not unique to Japan – Hong Kong has a similar decline but lacks the later increase – it is highlighted by those in the field of Japanese women's studies as a significant concern.[8]



Sources: International Labour Organisation, LABORSTA Labour Statistics Database, "Table: 1A Total and economically active population, by age group (Thousands)" extracted 3rd June 2010;

The 'dip' is the main focus of concern, as this shows that a valuable section of the labour force – young workers who build up and maintain human capital within companies – are leaving the labour force and most likely taking their growing body of skills with them. It is social conditions such as these – men working long hours and women retiring from the workforce exceptionally early –

8 The M-Shaped Curve is commonly discussed in most works on Japanese women. See Iwao, *The Japanese Woman* or Ogasawara, *Office Ladies and Salaried Men* for further details.

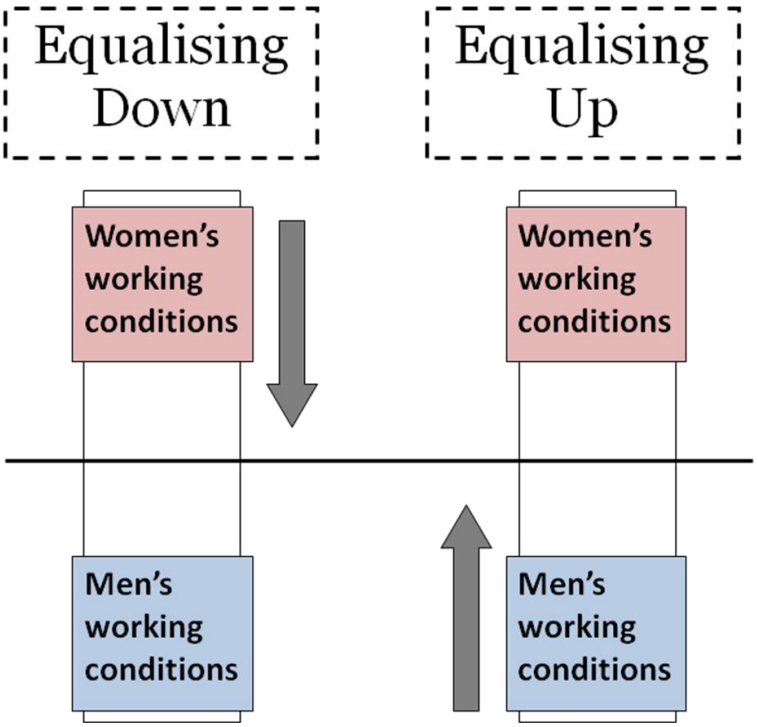
which frame the removal of these ‘protective’ provisions.

The debate within the Japanese media surrounding the removal of these provisions focused on the perceived difficulties Japanese women would face in a workplace with extended working hours. I examined a total of 59 articles ranging in date from May 1982 to July 2005 from four of Japan’s daily, mainstream and widely-circulated newspapers – the *Asahi Shinbun*, *Mainichi Shinbun*, *Nihon Keizai Shinbun* (*Nikkei*), and *Yomiuri* S*hinbun*. All of the newspapers supported the removal of the provisions, though each had a slightly different perspective. The *Asahi* was the most reluctant supporter of the removal, expressing concerns that the removal was happening too quickly for Japan’s society to support. The *Mainichi* was the paper that focused most on the underlying social issues which prompted the changes in the law, including issues facing working mothers. The *Nikkei*, Japan’s leading business paper, detailed the specifics of the legal changes in the most detail. Finally, the *Yomiuri* was the most supportive of the removal, pointing out that if more women were able to work, they would be help to prop up the decreasing Japanese labour force.

In spite of the differences in opinion, all of the newspapers simultaneously supported the removal of the provisions but expressed significant concerns over the preparedness of Japanese society to support these changes. They all saw the provisions as being both protective, and restrictive. The provisions can be classed as restrictive as they prevented women from working certain occupations and at certain times. However, they were also protective as they protected women from some of the long working hours in Japan. In short, the provisions had both good and bad aspects, and the newspapers all presented them as such, though in the end they all agreed that the provisions were restrictive and should be removed, though worries about the resulting lack of protections for women workers remained.

In the end, the best way to discuss the debate over the removal within the newspapers is to employ Susan Atkins’ ‘equalising’ terminology.[9] The newspapers all predicted that by removing the Provisions, women’s protected, less harsh working conditions would be the same as men’s – they would be equalised down.

9 Mackie, ‘Gendered Discourse’, p. 62.



What the newspapers all hoped for was nothing less than a complete social transformation, where men's working conditions would be equalised up to the more protected conditions enjoyed by their female counterparts. They believed that by equalising up men's conditions, Japan would become a better society – men would have better work/life balance and be able to spend more time at home. Women would also benefit, as they would gain more support at home and thus be able to work more, easing some of the strain of the ageing workforce. Studies have shown that the higher the opportunity cost of working is for women if they decide to have children, the less likely women are to undertake motherhood. [10] In other words, the lower barriers are for women to enter and re-enter the workforce, the more likely they are to have children, which would alleviate another social concern.

I found the attitude of the newspapers to gender issues quite surprising. I had thought that they would employ a strictly dichotomous discourse where gender equality and difference would be presented as mutually exclusive binary notions – if you want one, you can not have the other. I was pleased to see the newspapers taking a more balanced approach to gender equality – in general, they were calling for an approach to gender where differences are to be accepted, not punished. The newspapers hoped that this approach to gender in law would filter through from the legislative change and create a more gender-balanced society.

10 Rosenbluth, 'The Political Economy of Low Fertility', pp. 3-36.

Also defying strict binary opposition was the reaction of business and union representatives to the proposed removal, as reported in the newspapers. Referred to by the newspapers as *keieigawa* ('management side'),[11] *keieishagawa* ('executive side'),[12] *shiyōsha* ('employer') or *keieigawaiin* ('managerial committee member'), management took an 'individualist' approach[13] and used discourses of equality "to argue that 'equal opportunity' meant 'equal' treatment in all ways."[14] They failed to situate the long hours of the workplace within the wider social context where Japanese women shoulder the majority of household burdens while Japanese men work some of the longest hours in the developed world.[15] Aware that Japan was facing a rapidly greying and decreasing working population, management seized on the opportunity to gain an increased workforce without turning to immigrant workers.

While managerial representatives were united in their support for the removal, those who represented unions were less cohesive in their opinions on the removal, mainly as they were concerned with improving conditions for all workers, not just female workers. Opinions within each union remained consistent, however different unions argued for or against the proposed removal. They employed a mixture of 'individualist' (equal means equal, no exceptions) and 'relativist' (different but equal) stances. For example, some unions, such as the Automobile Industry Worker's Union called for the removal of the provisions, citing the need for greater workplace equality[16] while others, including members of the Aichi Prefectural Federation of Trade Unions, called for the retention of the provisions, declaring that opening women up to Japan's harsh working conditions would be disadvantageous to both the women and society.[17]

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11 '*Rōdō bun'ya no Kitei kanwa-ha Shinchō ni Koyō・Chingin Hakai no osore Genkōhō Zesei senketsu* (Carefully Relax the Labour Force Controls: Fears of Job and Wage Destruction, Top Priority Correction of Current Law)' *Asahi Shinbun*, morning edition, January 15, 1996;
'*Koyō Kintōhō minaoshi "Josei Hogo Kitei" Teppai ga Shōten* (EEOL Review: Focal Point: Abolishing the women's protection provisions)' *Mainichi Shinbun*, morning edition, June 6, 1996;
'*Josei nimo*', *Yomiuri Shinbun*, August 2, 1995.

12 '*Saiyō・Shōshin, Danjo sabetsu o Haijo – Kintōhō no Shishin・Shōreian Shimon* (Recruitment and Promotion, Eliminate Discrimination - EEOL Guidelines and Proposed Ordinance)' *Nihon Keizai Shinbun*, morning edition, November 1, 1985.

13 Offen, 'Defining Feminism', pp. 75-81.

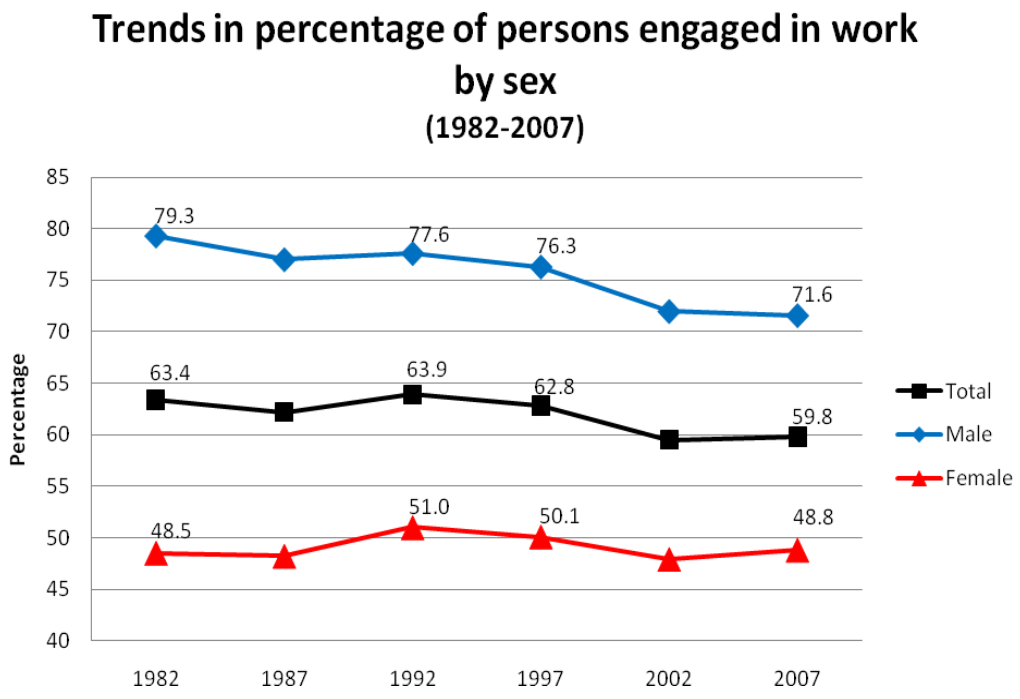
14 Mackie, 'Equal Opportunity', p. 100.

15 *Ibid*.

16 '*Josei Hogo Kitei Teppai o, Jidōshasōren, Teikitaikai de Hōshin – "Shōshin・Shōkaku no Samatageni"* (Abolish the women's protective provisions, says Automobile Union's Conference Objectives – "Hindrance towards Promotions")' *Nihon Keizai Shinbun*, morning edition, September 5, 1995.

17 '*Kisei Kanwa no Nami, Hataraku Jōken Akka ni Kikikan Kakuchi de Mēdē [Nagoya]* (Everywhere on May Day: A Wave of Deregulation, A Feeling of Crisis Towards the Deterioration of Working Conditions [Nagoya])' *Asahi Shinbun*, evening edition, May 1, 1997.

Despite the concerns raised within the newspapers and the differing opinions offered by the labour unions, in 1997 the Labour Standards Law was amended and the non-biological women's 'protective' provisions were removed. The changes were effective from early 1999 onwards, and since then the Japanese labour market has seen some interesting changes. Though it is difficult to extract the precise effects of a legislative change such as this from wider social change,[18] some comments can be made with reference to labour statistics relevant to the period.

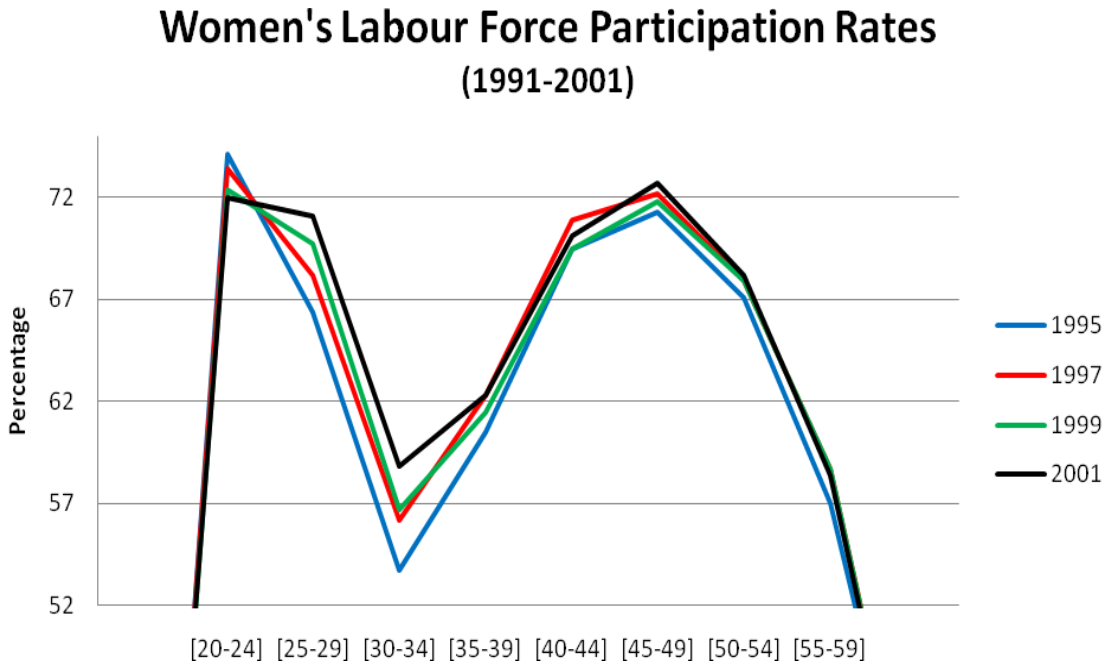


Source: Ministry of Internal Affairs and Communications, "2007 Employment Status Survey: Summary of Results", Figure I-2.

As the above graph indicates, the total percentage of women engaged in work has remained reasonably constant in Japan since the removal of the Provisions – much more so than the male rate. Of note is the fact that between 1992 and 2002, Japanese women's total labour force participation rates actually fell. This is likely to be due to two macroeconomic factors which impact upon Japan's working population. The first is Japan's lingering economic woes, and the second is Japan's ageing and decreasing workforce.

18 Edwards, 'The Status of Women in Japan', p. 220.

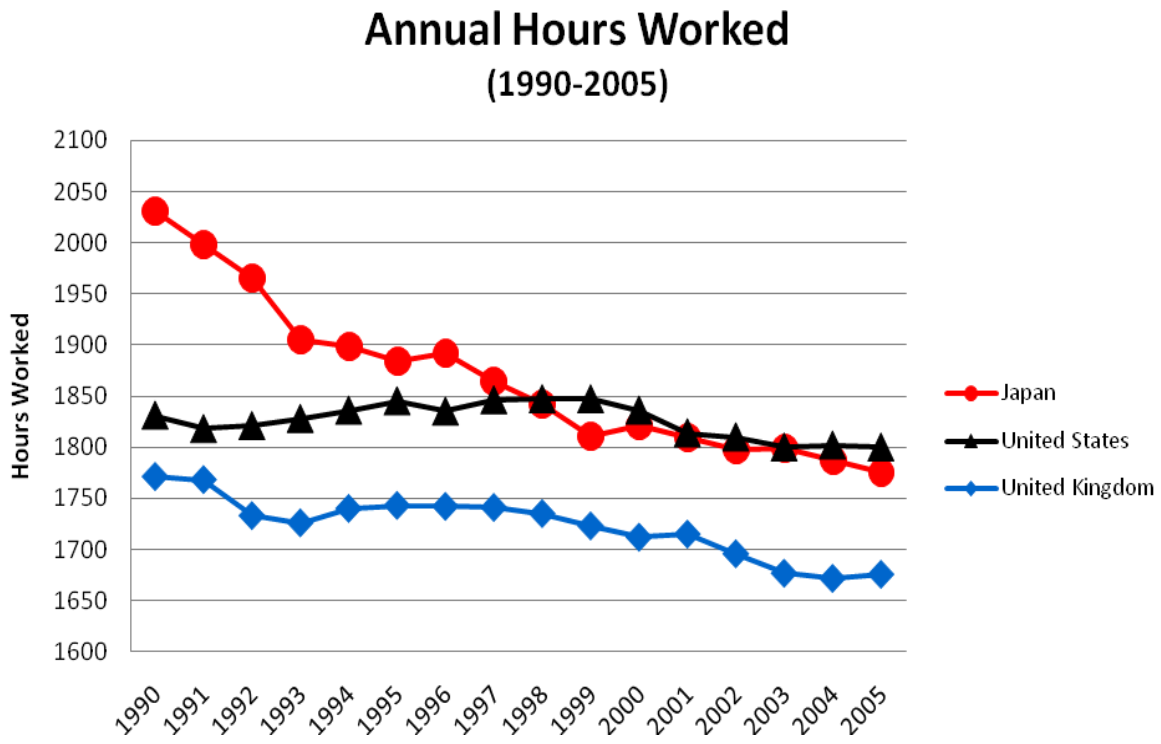
Despite the lack of significant improvements in total percentage of women engaged in work, there have been some changes in working habits since the removal.



Source: International Labour Organisation, LABORSTA Labour Statistics Database, "Table: 1A Total and economically active population, by age group (Thousands)" extracted 3rd June 2010.

As demonstrated here, the 'dip' in the M-Shaped Curve is gradually levelling out. While, admittedly, a smaller percentage of young women are entering the workforce, less of those women are leaving their jobs during their childbearing years. This can be interpreted as being indicative of a possible underlying change in the expectations society imposes on its young women – it may be that women are becoming accepted as simultaneous producers and re-producers, rather than these functions being termed as mutually exclusive discourses.

Further change can be seen in the annual hours worked in Japan. Since the time of the removal in the late 1990s, Japanese annual working hours have not exceeded those of the United States.



Source: OECD Statistics Database, "Dataset: Average annual hours actually worked per worker", extracted 4 June 2010.

While it is not possible to solely attribute this reduction to legislative change, it is also indicative of changing societal expectations. Whether these changes have been inspired by the changes in legislation or the changing legislation has been inspired by changing societal expectations and norms is somewhat of a chicken-and-egg question. Further, very detailed investigation will be required to resolve the debate, if indeed it can be resolved.

No matter which change inspired which, the changes observed do indicate that Japan is moving towards creating a society with better work/life balance. However, Japan is still plagued by some considerable social issues – the population is still ageing and decreasing, immigration remains a sensitive topic, and in 2009 Japan's fertility rate was down to 1.33 births per woman.[19] Clearly, work still needs to be done to resolve the underlying gender inequality in Japan in order to create a

19 United Nations, 'Indicators on Child-bearing', unstats.un.org.

better, more positive Japan in the future.

In conclusion, it is possible to say that the newspapers in this study all supported the removal of the gender-specific provisions from the Labour Standards Law, judging that women workers should be considered equal to their male counterparts and that the provisions were restrictive in nature. However, the newspapers did note that the provisions had something of a beneficial, protective capacity. All of the newspapers were concerned that women were being equalised down to men's working conditions, which they judged would have a negative impact on Japanese society as a whole. As a result, the newspapers all called for Japan to change social attitudes and equalise men up to women's working conditions, which they hoped would create a more gender-equal society with better work/life balance.

These hoped-for changes have not happened overnight, but they are happening. Statistical indicators hint that slowly but surely, Japanese societal expectations and working practices are evolving to create that more gender-equal society hoped for by the newspapers. However, social issues such as a greying population, gender inequality and a worryingly low fertility rate remain prevalent. Whether the observed changes are rapid enough, and/or large enough, to offset these issues is yet to be seen.

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