

COMMENTS

THE TRANSNATIONAL APPLICATION OF SEXUAL HARASSMENT LAWS: A CULTURAL BARRIER IN JAPAN

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1. INTRODUCTION

Globalization is shaping the world in which we live.¹ Although globalization began as an economic process, it has turned into a cultural, political, technological, environmental, and humanistic event.² Globalization has forced corporations to expand their operations across geographical borders,³ and has resulted in an increase in the number of multinational enterprises (“MNEs”).⁴ Corporate expansion, without regard for geographi-

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¹ “For business executives in the 1990’s, implementing and maintaining a [globally] integrated planning and control system will be a key factor for success.” Laura B. Pincus et al., Comment, *Legal Issues Involved in Corporate Globalization*, 1991 COLUM. BUS. L. REV. 269, 269 (quoting Trotter, *The Global Management of Integrated Planning and Control*, INT’L EXECUTIVE, Mar.-Apr., 1990, at 27-28).

² See Alex Y. Sieta, *Globalization and the Convergence of Values*, 30 CORNELL INT’L L.J. 429, 429-30 (1997).

³ See *id.*; see also Pincus, *supra* note 1, at 270 (noting that globalization results in the firm’s management “dispersed across continents, and personnel assignments not [being] bound by languages, country lines or citizenship of the firm’s employees.”).

⁴ See Paul F. Buller et al., *The Challenge of Global Ethics*, 10 J. BUS. ETHICS 767, 767 (1991).

cal borders, requires corporate officers to deal with foreign laws, policies, and cultures. As a result, the businesses of the United States, Western Europe, and Japan feel pressure to make their practices more uniform.⁵

Though the process of globalization has standardized corporate structure and organization,⁶ the same cannot be said for business ethics.⁷ The global economy, although marked with borderless transactions and dealings, has continued to divide individuals along "racial, ethnic, religious and gendered borders."⁸ Since the way individuals conduct themselves in business is closely tied to their culture and background, MNEs have had a difficult time dealing with foreign countries' business practices leading to inevitable conflicts.⁹ This ability of corporations to globalize business ethics has led to numerous problems.¹⁰

Sexual harassment, a societal construct, largely results from underlying cultures, values, and customs, and it creates several problems for MNEs. Despite the ubiquity, publicity and universality of sexual harassment,¹¹ countries approach the problem

⁵ See David Vogel, *The Globalization of Business Ethics: Why America Remains Distinctive*, 35 CAL. MGMT. REV. 30 (1992).

⁶ "The structure and organization of firms, manufacturing technologies, the social organization of production, customer relations, product development, and marketing—all are becoming increasingly similar throughout the advanced industrial economies." *Id.*

⁷ Some scholars argue, however, that there has been a globalization of values and human rights. Additionally, norms of business behavior differ greatly among capitalist nations. See Vogel, *supra* note 5, at 30.

⁸ Zillah Eisenstein, *Stop Stomping on the Rest of Us: Retrieving Publicness from the Privatization of the Globe*, 4 IND. J. GLOBAL LEGAL STUD. 59, 59 (1996).

⁹ Buller et al., *supra* note 4, at 767.

¹⁰ For an examination of the problems that corporations face when dealing with foreign corporations whose standards of ethical behavior are quite different from their own, see Vogel, *supra* note 5.

¹¹ Sexual harassment is not a unique problem in the United States, rather the problem is prevalent throughout the world. In Sweden, 17% of about 2,000 women surveyed stated that they were subject to obscenities and sexual innuendoes in the workplace. A Spanish commentary reported that more than eight out of ten women are regularly harassed at work. In Germany, more than two-thirds of the women surveyed reported regular sexual harassment in the workplace, whereas nearly half of their male colleagues felt their behavior was not problematic. See Beverly H. Earle & Gerald A. Madek, *An International Perspective on Sexual Harassment Law*, 12 LAW & INEQ. J. 43, 45 (1993).

differently.¹² Such differences have led some scholars to propose a universal sexual harassment law.¹³ That is, some have argued that the time is ripe for national and corporate leaders to move consciously toward the development of global ethics.¹⁴ Implicit in this concept of global ethics is the unification of sexual harassment laws.¹⁵

Although the transnational application of sexual harassment law may appear enticing to those desperate to solve the pervasive problem of sexual harassment, the likelihood of success of such a proposal is dismal. Sexual harassment laws reflect societal norms about the roles of men and women, confrontation, power dynamics, and dispute resolution; therefore, a one-size-fits-all option is not viable.¹⁶ In examining the legal and cultural differences between the United States and Japan, this Comment will highlight the problems with the transnational application of sexual harassment law(s). The United States and Japan were chosen because both are active in the global economy, but have extremely different cultures. Because trading between the United States and

¹² See generally *id.* at 79-88 (reporting on the status of sexual harassment laws European Nations and Japan).

¹³ See, e.g., Earle & Madek, *supra* note 11; Gérard Lyon-Caen, *The Evolution of Labour Law*, in Lord Wedderburn et al., *LABOUR LAW IN POST-INDUSTRIAL ERA: ESSAYS IN HONOUR OF HUGO SINZHEIMER* 93 (1994) (noting that non-localized economic activity which uses satellites, computers, and telematics no longer coincides with the application of laws which stop at borders); Michael Starr, *Hands Across Water: Sexual Harassment & The Global Company*, 11(8) *CORPORATE COUNSELLOR* 1 (1997) (suggesting that the United States begin to impose its own sexual harassment laws on other global leaders.); Adam M. Mycyk, Comment, *United States Fair Employment Law in the Transnational Employment Arena: The Case for the Extraterritorial Application of Title VII of the Civil Rights Act of 1964*, 39 *CATH. U. L. REV.* 1109 (1990) (suggesting that with the increasing number of United States employers in foreign countries the United States should consider imposing its employment legislation on foreign countries).

In proposing that the United States impose its anti-discrimination legislation on foreign nations Starr stated "A global leader in its field must be a global leader in its employment practices as well." *Id.*

¹⁴ See Buller, et al., *supra* note 4, at 767.

¹⁵ Throughout this Comment, the unification of sexual harassment laws will also be referred to as the transnational application of sexual harassment laws.

¹⁶ See Anita Bernstein, *Law, Culture, and Harassment*, 142 *U. PA. L. REV.* 1227, 1231-32 (1994) (discussing how a middle ground between the United States' approach and the European approach to sexual harassment would be impossible because of societal and cultural constructs).

Japan has increased since the elimination of trade barriers, transactions and contact between corporations from the two countries have become more prevalent.¹⁷ This increased contact between Japanese and United States corporations, the growing number of Japanese subsidiaries and branches in the United States,¹⁸ and the increasing number of American women working for Japanese corporations,¹⁹ have introduced Japanese corporations to women in the workplace²⁰ and highlighted the problem of sexual harassment in the Japanese workplace.²¹ Moreover, two centuries of isolation have given Japan the opportunity to develop a culture distinct from other industrialized nations.²² Furthermore, the notion of a universal set of laws is arguably a Western notion at odds with Japan's non-Western society, since it does not account for differences among individuals in society.²³

This Comment describes the problems associated with globalization of sexual harassment laws by focusing on the Japanese corporate culture and its treatment of women. Although all forms of sex discrimination are products of societal attitudes

¹⁷ Japanese investment in the United States is over \$100 billion and more than 400,000 Americans are employed in over 2000 Japanese corporations located within the United States. See Ronald E. Yates, *Japan Firms in U.S. Make Efforts to Fit In*, CHI. TRIB., Jan. 13, 1992, at 1. Between 1979 and 1990, Japanese annual investment in the U.S. increased nearly eighty-fold, from 257 million to 19.9 billion dollars. See Kiyoko Kamio Knapp, *In the World, But Not Of It: Japanese Companies Exploiting the U.S. Civil Rights Law*, 24 DENV. J. INT'L L. & POL'Y 169 (1995).

¹⁸ See Knapp, *supra* note 17, at 170 (discussing Japanese investments in the United States in the form of subsidiaries or branches of Japanese companies).

¹⁹ See *id.* (reporting that in 1989, 500,000 women worked for Japanese companies).

²⁰ See Dana Marie Crom, Comment, *Clash of the Cultures: U.S.-Japan Treaty of Friendship, Title VII, and Women in Management*, 3 TRANSNAT'L LAW. 337, 338 (1990) (predicting increased trade between Japan and the United States after the removal of trade barriers).

²¹ See generally Knapp, *supra* note 17, at 170-71 (discussing the relationship between increased Japanese investment in the United States and employment discrimination charges against Japanese employers); Yates, *supra* note 17, at 1 (reporting that the clash of business cultures has led to increased problems between the United States and Japan).

²² See Kiyoko Kamio Knapp, *Warriors Betrayed: How the Unwritten Law Prevails in Japan*, 6 IND. INT'L & COMP. L. REV. 545, 565 (1996) (noting how Japan's isolation as an island has permitted it to establish a natural cohesion of societal values and norms).

²³ See Tadashi Hanami, *Globablization of Employment and Social Causes*, JAPAN LAB. BULL. Feb. 1, 1997, at 4.

toward women, this Comment will focus primarily on the problems Japan would face if compelled to employ transnational sexual harassment law(s). Section 2 discusses the history of sexual harassment in Japan and illustrates the pervasive sexual harassment women experience in the workplace. Section 3 describes women's role in Japanese society and examines the main features of Japanese corporate culture which make it so difficult for women to succeed in employment. Section 4 describes and evaluates Japan's legislative response to sexual harassment in the workplace. Section 5 examines Japan's growing need for alternative legislation to combat sexual harassment by focusing on the problems Japanese based corporations encounter when establishing themselves in the United States and the changes in Japan forcing the acceptance of women in the workplace. Section 6 proposes alternative methods to combat sexual harassment on a global level. Section 7 concludes this Comment.

2. SEXUAL HARASSMENT IN JAPAN

Sexual inequality in employment is universal. Throughout the industrialized world women and men are treated unequally in the workplace.²⁴ Nonetheless, gender inequality pervades Japan as it does in no other industrialized nation.²⁵ The Director of the Office for Gender Equality, Natori Haniwa, stated that Japan was behind Europe and the United States in providing equality in the workplace.²⁶ The structure of the Japanese workplace and business culture have contributed to the challenges that working women face on a daily basis.²⁷ Legal obstacles, social

²⁴ See Helen A. Goff, Note, *Glass Ceilings in the Land of the Rising Sons: The Failure of Workplace Gender Discrimination in Law and Policy in Japan*, 26 LAW & POL'Y INT'L BUS. 1147, 1147 (1995).

²⁵ See *id.* A Japanese government report found Japanese working women to be sexually harassed more than women in other industrialized nations. See Stuart Young, *Japan Lags in Progress for its Women Workers*, CHI. TRIB., Aug. 3, 1997, at 8.

²⁶ See Young, *supra* note 25, at 8. In a poll conducted by the Japanese Prime Minister's office 47.3% of the respondents reported that women are discriminated against in employment and 35% felt that sexual harassment is a problem in the workplace. See *Forty PC of Japanese Feel Human Rights Infringement Rise*, JAPAN ECON. NEWSWIRE (Oct. 25, 1997), available in WLJWIRE.

²⁷ See Goff, *supra* note 24, at 1148 (describing the difficulty Japanese women have in the Japanese business world); see also *infra* Sections 3.1. through 3.1.3.

embarrassment, and an unstable job market have led to a sense of resignation among many Japanese women.²⁸

2.1. *History of Sexual Harassment in Japan*

Although many observers view sexual harassment as a relatively new problem facing the Japanese,²⁹ it has been an obstacle in the workplace for as long as men and women have worked together.³⁰ The Japanese term for sexual harassment,³¹ “*sekushuaru harasumento*,” did not become part of commonly accepted language until 1989.³² Even though an official, legal definition of sexual harassment does not exist,³³ on April 16, 1992, a Japanese District Court held for the first time that “sexual unpleasantness” in the workplace is violative of a worker’s right to maintain her reputation.³⁴ Moreover, the Japanese, relying on international

²⁸ See Hillary E. MacGregor, *In Japan Many Men Just Don't Get It*, L.A. TIMES, Oct. 13, 1995, at A1 (noting how many women have just decided to tolerate the harassment they face in the workplace).

²⁹ See Leon Wolff, *Eastern Twists on Western Concepts: Equality Jurisprudence and Sexual Harassment in Japan*, 5 PAC. RIM. L. & POL'Y J. 509, 517-18 (1996) (stating that the average person views sexual harassment as a “relatively foreign concept” and most Japanese academics did not become interested in sexual harassment until 1983).

³⁰ See Hiroko Hayashi, *Sexual Harassment in the Workplace and Equal Employment Legislation*, 69 ST. JOHN'S L. REV. 37, 45 (1995).

³¹ Sexual harassment is frequently referred to as “*seku hara*,” formulated to closely resemble the English version of the term. Anita Bernstein, *supra* note 16, at 1134; Michael A. Lev, *The Sexism Stain at Mitsubishi: The Prevailing Attitude Is That Women Are Not Equal*, CHI. TRIB., Sept. 21, 1997, at C3 (noting that the Japanese media did not know what to call the behavior, so they based their version on the English phrase “sexual harassment”).

³² See Wolff, *supra* note 29, at 513.

³³ That is, Japanese law fails to recognize sexual harassment as an entity separate from sex discrimination. See, e.g., KENPŌ [Constitution] art. 14, para. 1 (Japan); MINPŌ [Civil Code], Law No. 89 of 1896, art. 90, *translated in* THE CIVIL CODE OF JAPAN (Eihun-Horea-Sha, Inc., Codes Translation Institute Inc. 1992) [hereinafter Law No. 89]; Law Respecting the Improvement of the Welfare of Women Workers Including the Guarantee of Equal Employment and Treatment between Men and Women in Employment, Law No. 45 of 1985 (amending Law No. 113 of 1972) [hereinafter “Equal Employment Opportunity Law” or “EEOL”].

³⁴ Judgment of Apr. 16, 1992 (Fukuoka Sexual Harassment Case, Fukuoko Dist. Ct., 783 HANREI TAIMUZU 60 (1992)). In this case a female editor successfully sued her previous employer, a small publishing company, and her former supervisor for creating a hostile work environment. This District Court decision provided a legal definition of sexual harassment. *Id.*

concepts,³⁵ define sexual harassment as “unwelcome remarks and conduct in the workplace which influences a worker’s job performance and cause a hostile work environment.”³⁶ Many feminist academics and lawyers argue that sexual harassment controverts the Japanese legal construct of gender equality.³⁷

2.2. *Increased Attention to Sexual Harassment in Japan*

Since 1989, when the first sexual harassment case was filed in the Fukuoka District Court,³⁸ the interest in workplace sexual harassment has increased. After the case was filed, Japanese newspapers and magazines contained many articles and conducted many surveys on sexual harassment.³⁹ Furthermore, books on sexual harassment became popular on the shelves of Japanese bookstores.⁴⁰ Academics have also taken advantage of the in-

³⁵ See Wolff, *supra* note 29, at 519 (explaining that in an attempt to define sexual harassment Japanese academics rely on concepts such as “unwarranted, unsolicited, and unreciprocated attention of a sexual nature, which is accompanied by threats or promises of benefits, or creates a hostile working environment.”).

³⁶ Hayashi, *supra* note 30, at 46 n.55 (referring to a video in which the Ministry of Labor defined sexual harassment as “sexual remarks or actions against the will of a partner and creating job disadvantages for that person in retaliation against their ‘negative’ response, resulting in a deterioration of the work climate.”).

³⁷ See Wolff, *supra* note 29, at 519 (defining sexual harassment as “unwarranted, unsolicited and unreciprocated attention of a sexual nature, which either is accompanied by threats or promises of benefits, or creates a hostile working environment.”).

³⁸ Judgment of Apr. 16, 1992 (Fukuoka Sexual Harassment Case, Fukuoko Dist. Ct., 783 HANREI TAIMUZU 60 (1992)). It should be noted that this case was brought under a loophole in the civil code that entitles women to a comfortable working environment. See MacGregor, *supra* note 28, at A1.

³⁹ See Wolff, *supra* note 29, at 518 (discussing the widespread interest in sexual harassment in Japan after the first sexual harassment case). The following list is a sampling of the many legal articles written about sexual harassment that were published in 1990: Akio Chiba, *Sekushuaru harasumento o kangaeru [Reflecting on Sexual Harassment]*, 41 RODO HOGAKU KENKYU < CIR U > KAIHO, 1 (1990); Toskiaki Hasegawa, *Kawaru byodokanto sekushuaru harasumento [Sexual Harassment and Shifting Perspectives on Equality]*, HOGAKU SEMINA, May 1990, at 56; Akira Okuyama, *Sekushuaru harasumento to ihosei handan no kijun [Sexual Harassment and the Criteria for Determining Its Illegality]*, JURISUTO, June 1, 1990, at 51.

⁴⁰ See Wolff, *supra* note 29, at 518 (“[I]n 1990 alone some ten separate books on sexual harassment appeared, including ‘guides’ for male coworkers that ranged from sensitization and consciousness-raising strategies to more basic “‘how not to’ and ‘how not to get caught’ guidebooks.”) (quoting Sandra

creased interest in sexual harassment to explore the problem of sexual harassment and to analyze possible legal remedies.⁴¹

In 1991, responding to the growing concern in Japan over sexual harassment, the Ministry of Labor established a commission to examine the problems faced by women working for Japanese corporations and to prepare a report about sexual harassment issues in Japan.⁴² Moreover, the Diet⁴³ has decided to include sexual harassment in the list of prohibited employer activities found in the amendments to the Equal Employment Opportunity Law.⁴⁴ Colleges and universities are also addressing the issues surrounding the women in the workplace and the problems of gender equality in the global economy.⁴⁵ Even the perpetrators of sexual harassment are addressing the problem. For example, an increasing number of Japanese corporations are aware of sexual harassment. According to a survey conducted by the Japan

Buckley, *A Short History of the Feminist Movement in Japan*, in *WOMEN OF JAPAN AND KOREA* 117 (Joyce Gelb & Marian Lief Palley eds., 1994).

⁴¹ See *id.* at 518-19 (reporting that many leading legal journals published special editions dedicated to the examination of sexual harassment).

⁴² See Yoichiro Hamabe, *Japan Trade: Inadvertent Support of Traditional Employment Practices: Impediments to the Internationalization of Japanese Employment Law*, 12 *UCLA PAC. BASIN L.J.* 306, 326-27 (1994).

⁴³ The Japanese National Diet, commonly referred to as the Diet, consists of a bicameral legislature of popularly elected officials. The Diet is "the highest organ of State power, and . . . the sole law-making organ of the State . . ." Lawrence W. Beer, *Japan's Constitutional System and Its Judicial Interpretation*, in *LAW AND SOCIETY IN CONTEMPORARY JAPAN* 7, 12 (John O. Haley ed., 1988).

⁴⁴ Act Concerning the Protection of Equal Opportunity and Treatment for Men and Women in the Field of Employment, Law No. 92 of 1997, (effective April 1, 1999) [hereinafter Law No. 92]. For a full discussion of the amendments see *infra* Section 4.3.3.

⁴⁵ See, e.g., *International Industrial Relations Association*, Japan Institute of Labour (1998), vol. 37, available in <<http://jil.go.jp/bulletin/year/1998/vol37-12/05.htm>> (discussing upcoming conference on "Global Integration and Challenges for Industrial Relations and Human Resources Management in the 21st Century"); *Equality in the Workplace Urged Panelists Chastise Japan Over Inaction*, *JAPAN TIMES*, July 31, 1998, available in LEXIS, News Library, Jtimes File (discussing the "International Standard of Equality Workplace" symposium held in Japan and attended by several hundred men and women interested in the United Nation's Convention on the Elimination of All Forms of Discrimination Against Women); *Gender Equality focus on Global Symposium*, *JAPAN TIMES*, July 19, 1998, available in LEXIS, News Library, Jtimes File (advertising an international symposium on gender equality).

Overseas Enterprise Association,⁴⁶ twenty-six percent of the 168 corporations who responded indicated that they have formal policies to deal with sexual harassment complaints in their offices in Japan.⁴⁷ While fifty-two percent of the respondents said that they planned to create such policies,⁴⁸ and another twenty-four percent indicated that they have distributed information to increase sexual harassment awareness within their company.⁴⁹

2.3. *Continued Ambivalence Toward Sexual Harassment by the Japanese Media, Legal System, Businessmen and Corporations*

Despite the increased attention given to sexual harassment, Japanese corporations and businessmen continue to ignore the problem.⁵⁰ Furthermore, popular culture has trivialized sexual harassment by publishing sarcastic articles with titles like "I Love Sexual Harassment."⁵¹ Even news reporters fail to take sexual harassment seriously. On a morning news program, two reporters jokingly downplayed a sexual harassment case in which a female high school baseball manager was ordered to wash the backs

⁴⁶ The Japanese Overseas Enterprises Association consists of 400 companies that have places of business in Japan and overseas. See *More Companies Addressing Harassment*, DAILY YOMIURI, Nov. 11, 1998, at 2, available in Westlaw, Dyyshim File.

⁴⁷ See *id.* (noting that this is a 9% increase from the previous survey conducted by the Japan Overseas Enterprises Association).

⁴⁸ See *id.* (noting that this is a 35% increase from the previous survey conducted by the Japan Overseas Enterprise Association).

⁴⁹ See *id.* (noting that this is a 17% increase from the previous survey conducted by the Japan Overseas Enterprise Association).

⁵⁰ Only 10% of Japanese corporations have sexual harassment policies or mention the issue to employees during training sessions or casual meetings. See *Japanese Businesses Launching Fight Against Sexual Harassment*, CHI. TRIB., Apr. 27, 1997, available in 1997 WL 3543249.

In reaction to a study conducted by the National Personnel Authority ("NPA"), an agency officer insisted that the results of the survey were inflated because the women surveyed were highly sensitive and equated a touch on the shoulder with a sexual relationship. See *supra* note 11 and accompanying text; see also *Sex Harassment Rampant in SDF*, JAPAN TIMES, Jan. 15, 1999, available in LEXIS, News Library, Jtimes File; see also MacGregor, *supra* note 28, at A1 (noting that courts, law enforcement officials, and corporations disguise the problem of sexual harassment in euphemisms, calling sexual harassment a "communication gap").

⁵¹ See MacGregor, *supra* note 28, at A1.

of some of the male players.⁵² Japanese businessmen and corporations continue to rely on the cultural norms that allow sexual harassment to persist.

2.4. *Personal Accounts of Sexual Harassment*

In present-day Japan, women indicate that sexual harassment pervades the workplace.⁵³ A survey of women and men working for a Defense Agency organization, the National Personnel Authority ("NPA"), found that nearly twenty percent of the women respondents reported that they were forced to have a sexual relationship with men at work, and most female respondents regarded these relationships as sexual harassment.⁵⁴ Stories of women who are victims of, or fear sexual harassment, are often featured in the local newspapers around Japan.⁵⁵ For example, a recent letter to the editor described a woman employed at a women's junior college who had been sexually harassed at work.⁵⁶ The woman experienced several incidents of sexual harassment, including physical and verbal encounters.⁵⁷ When she later reported the harassment, the college told her to "be quiet" and eventually fired her.⁵⁸

⁵² See William Penn, *Yet More Execrable Shows to Skip*, DAILY YOMIURI, July 23, 1997, at 9.

⁵³ See *Sex Harassment Policy Should Apply After Work*, THE JAPAN TIMES, Sept. 3, 1998, available in LEXIS, News Library, Jtimes File (reporting that 70% of 5000 civil servants surveyed indicated that they were sexually harassed through touching and offensive jokes); *Sex Harassment Rampant in SDF*, *supra* note 50, at 4 (reporting that "more than 18% of women working for the Self-Defense Forces or other Defense Agency organizations have been forced to engage in sexual relationships with male bosses or colleagues.").

⁵⁴ See *Sex Harassment Rampant in SDF*, *supra* note 50, at 9.

⁵⁵ See generally Todd A. Freitag, Letter to the Editor, *Tale of Sexual Harassment*, DAILY YOMIURI, Mar. 30, 1997, at 4 (discussing harassment of part-time worker at a women's junior college); MacGregor, *supra* note 28 (noting that the media often encouraged women to put up with sexual harassment to get a story); Erika Tokomoto, *Letters: Campaign for Rights*, ASASHI SHIMBUN, Dec. 7, 1996 (noting the fear women in college feel about the prevalence of sexual harassment in Japanese companies).

⁵⁶ See Freitag, *supra* note 55, at 4.

⁵⁷ See *id.*

⁵⁸ See *id.*

2.5. *Sexual Harassment Lawsuits*

Despite cultural obstacles, victims of sexual harassment are filing sexual harassment law suits. Since the 1989 *Fukuoka* decision,⁵⁹ Japanese women have filed sexual harassment suits, although at a much lower rate than American women file suits in the United States.⁶⁰ Japan's most prominent feminist attorney, Mizuho Fukushima, has filed approximately five cases a year for the past six years.⁶¹ Despite filing legal actions, sexual harassment victims typically fail to take their cases past the District Court level, although they are able to appeal decisions.⁶² Despite this, the lower court decisions on sexual harassment indicate an attempt on the part of Japanese courts to deal with the sexual harassment problem.⁶³ Although Japanese courts have begun to recognize sexual harassment as a viable cause of action, they award minimal amounts to successful plaintiffs.⁶⁴ In 1990, a Japanese district court ruled that supervisors cannot require sexual favors from their female employees and that to do so constitutes sexual harassment.⁶⁵ The court awarded \$10,000 for intentional infliction of emotional distress and \$1,000 for attorney's fees.⁶⁶ Similarly, a Japanese district court found an employer liable for failing to maintain a comfortable working environment for women, and awarded the plaintiff \$16,500 for intentional infliction of emotional distress and attorney's fees.⁶⁷

⁵⁹ Judgment of Apr. 16, 1992 (Fukuoka Sexual Harassment Case, Fukuoko Dist. Ct., 783 HANREI TAIMUZU 60 (1992)).

⁶⁰ See Michael Hoffman, *Waiwai: Betraying the Trust*, MAINICHI DAILY NEWS, Oct. 5, 1997, available in 1997 WL 14873811; Becky Kukuk, Comment, *Eastern Men, Western Women: Coping with the Effects of Japanese Culture in the United States Workplace*, 28 GOLDEN GATE U. L. REV. 177, 202-03 (1998) (reporting that by the end of 1995, twenty cases of sexual harassment were filed in Japanese courts by alleged victims of sexual harassment).

⁶¹ See MacGregor, *supra* note 28.

⁶² See Wolff, *supra* note 29, at 520 (indicating the ability of sexual harassment cases to be appealed to a higher level court).

⁶³ See *id.*

⁶⁴ See generally Kukuk, *supra* note 60, at 203 (1998) (discussing the minimal awards given by Japanese Courts in sexual harassment suits).

⁶⁵ See Judgment of Dec. 20, 1990, Shizuoka Chisai (Shizuoka District Court), 580 Rodo Henrei 17 (Japan).

⁶⁶ See *id.*

⁶⁷ See Judgment of Apr. 16, 1992 (Fukuoka Sexual Harassment Case, Fukuoko Dist. Ct., 783 HANREI TAIMUZU 60 (1992)).

3. WOMEN IN JAPANESE SOCIETY

Retaining the Confucian vision, Japanese society places importance on the "maintenance of harmony in personal relationships" and business dealings.⁶⁸ From an early age, society teaches individuals to avoid confrontation and conform to social norms.⁶⁹ This focus on harmony and homogeneity may appeal to some initially, but it has serious implications for Japanese women. From childhood, Japanese women are told to follow their peers and "go with the flow."⁷⁰ Elders teach females to preserve the status quo and remain patient and content when faced with a problem.⁷¹ Society considers desirable only deferential women who seek to maximize harmony. In such a society, women find it extremely difficult to demand equitable treatment and challenge gender discrimination.⁷² Individuals harmed are often under tremendous societal pressure to maintain the social order,⁷³ and failure to uphold social harmony brings shame and embarrassment.⁷⁴

⁶⁸ Goff, *supra* note 24, at 1152.

⁶⁹ See generally Mark B. Schaffer, *The Implications of Japanese Culture on Employment Discrimination Laws in the United States*, 10 HOUS. J. INT'L L. 375, 391 (1993) (discussing Japanese attitudes towards women).

⁷⁰ SUMIKO IWAO, *THE JAPANESE WOMAN: TRADITIONAL IMAGE AND CHANGING REALITY* 9 (1993).

⁷¹ See *id.* at 10 (indicating that when Japanese women are faced with a conflict they often assess the entire situation before determining how to react).

⁷² In Japanese society, female employees' complaints about the workplace are perceived to be suggesting that the female worker cares more about herself than the group. This perceived focus on one's self is ill-received in Japan. See M. Diane Helweg, *Japan's Equal Employment Opportunity Act: A Five-Year Look at its Effectiveness*, 9 B.U. INT'L L. J. 293, 309 (1991) (explaining that when a female makes complaints about workplace discrimination it suggests to others that she cares more about her own well-being than the well-being of the group; therefore, society encourages women to feel satisfied with their role in the family); see also Dean J. Gibbons, *Law and the Group Ethos in Japan*, 3 INT'L LEGAL PERSP. 98, 110 (1990) (noting the "reluctance to break an individual's ties to an employer for a work-related wrongdoing"); Goff, *supra* note 24, at 1152-53 (discussing Japanese societal emphasis on maintaining social harmony).

⁷³ See Kukuk, *supra* note 60, at 179 (stressing the importance of *Wa* (harmony in society)); Schaffer, *supra* note 69, at 388 (discussing the importance Japanese society places on maintenance of harmony); Hiroshi Wagatsuma & Arthur Rosett, *The Implications of Apology: Law and Culture in Japan and the United States*, 20 L. & SOC'Y REV. 461, 465 (1986) (outlining traditional Japanese practice of "harmonious interpersonal relationships and community solidarity.").

⁷⁴ See Kukuk, *supra* note 60, at 183 ("The Japanese believe that conflicts are shameful because conflicts imply disturbances in the social order."); Schaffer, *supra* note 69, at 398.

Moreover, victims are often dissuaded from making their claims public for fear that mentioning their grievances would result in disharmony.⁷⁵

Since Japanese society places a great deal of importance on harmonious relationships and frowns on confrontation, it is not surprising that conflicts in Japan are often resolved without courts or lawyers.⁷⁶ Japanese society perceives litigation as dividing the parties into “winners and losers” and thereby disrupts the amicable culture that society cherishes.⁷⁷ Since the Japanese view litigation as rebellious and distasteful,⁷⁸ the Japanese judicial system often requires that the parties first resort to alternative dispute resolution before proceeding with a trial.⁷⁹

As in many societies, Japanese women are the homemakers and keepers of the family. In a Japanese family, the wife has control over the children and house because the husband is too busy with work to be involved.⁸⁰ Japanese societal norms clearly mandate that women stay at home.⁸¹ On average, working mothers spend three hours and thirty-one minutes per day on home maintenance and child care compared to working fathers who only spend eight minutes per day with their children and doing house-

⁷⁵ See Knapp, *supra* note 22, at 567.

⁷⁶ See Kukuk, *supra* note 60, at 183; see also Schaffer, *supra* note 69, at 388 (discussing the minimal litigation in Japanese society).

⁷⁷ See Schaffer, *supra* note 69, at 389 (explaining that the division of society into winners and losers contradicts the “cultural norm of apology, forgiveness, and subsequent reconciliation between groups”).

⁷⁸ See Knapp, *supra* note 22, at 566 (noting that the Japanese view litigation as a general threat to society).

⁷⁹ See Schaffer, *supra* note 69, at 389.

⁸⁰ See Goff, *supra* note 24, at 1153; see also Alice C. L. Lam, WOMEN AND JAPANESE MANAGEMENT: DISCRIMINATION AND REFORM 65-67 (1992).

⁸¹ In 1991, the Japanese Prime Minister's Office conducted a survey on the lifestyles of Japanese women. In the survey, more than 90% of 1,768 married people thought that women should be responsible for doing the cleaning and cooking. Over 80% of the respondents said that wives should be in charge of the finances and shopping. More than 70% of the married people interviewed said that wives should take care of children. Fewer than 20% of those surveyed felt that care for the children should be a joint responsibility. See Japan Info. Ctr., *Survey Underscores Slow Evolution on Women's Role in Japanese Society*, 38 JAPAN REP. 4 (1992). See generally Kiyoko Kamio Knapp, *Still Office Flowers: Japanese Women Betrayed by the Equal Employment Opportunity Law*, 18 HARV. WOMEN'S L.J. 83, 93 (1995) (reporting that marriage only increases the responsibilities of working women).

hold chores.⁸² A woman's obligation to her family and home makes it nearly impossible for Japanese women to simultaneously maintain a family and work outside the home. Tradition requires that a Japanese woman work only until marriage. Failure to quit work upon marriage results in criticism of her husband's ability to support her.⁸³

3.1. *The Japanese Workplace and the Role of Women*

We can attribute Japan's strong global economic position today to its structured and somewhat unique business culture.⁸⁴ Every year on April 1, the first day of Japan's fiscal year, most Japanese companies hold a reception to welcome new employees.⁸⁵ During these receptions, corporate executives give speeches and teach the employees the company anthem.⁸⁶ The workplace becomes a community, in which the employer expects the employees to eat in the company cafeteria, marry someone from the company, attend corporate social events, and spend their vacations at a corporate retreat.⁸⁷ This devotion pervades Japanese corporate culture. The Japanese business culture consists of three main components: a lifetime commitment to one's work, a seniority system, and a division of the workforce into core and non-core positions.⁸⁸ As seen below, these components make it extremely difficult for women to succeed in the Japanese workplace.

3.1.1. *Lifetime Commitment to Work*

The Japanese believe strongly that one's work is a lifetime commitment.⁸⁹ When an individual is hired by a Japanese corpo-

⁸² See Knapp, *supra* note 81, at 93 (citing results reported in *Josei-Tachi Wa Ima: Yureru Kint-ob-o Sedai* [Women Today: A Shaken EEOL Generation]). But see 1995 *White Paper on Working Women*, JAPAN LAB. BULL. 1, May 1, 1996, (reporting that men spend 35 minutes a day on household duties).

⁸³ See Kukuk, *supra* note 60, at 193 (1998) (discussing the embarrassment a working woman's husband is likely to suffer).

⁸⁴ Goff, *supra* note 24, at 1148-49. But see *infra* notes 144-46 and accompanying text for a discussion of the recent economic problems plaguing Japanese society.

⁸⁵ Knapp, *supra* note 81, at 91.

⁸⁶ See *id.*

⁸⁷ See *id.*

⁸⁸ See Goff, *supra* note 24, at 1151.

⁸⁹ In Japanese the notion that "work is a lifetime commitment" is referred to as "Shu-Shin-Koyo." See Goff, *supra* note 24, at 1149.

ration, the corporation makes a lifetime commitment to that employee, thereby creating an unwritten employment contract that that usually lasts the rest of the employee's life.⁹⁰ Employees' commitment to their employer is evidenced by their identification with their employers rather than with their occupations.⁹¹

Japanese corporations provide significant benefits⁹² and training to their employees, and, in return, Japanese employees are willing to devote their time and energy to their employer.⁹³

Since women are unlikely to remain with their employment for an extended period of time, employers rarely invest time or money to train their female employees.⁹⁴ Furthermore, individuals employed by Japanese corporations are taught to dedicate their life to work. That is, employers expect employees to socialize with other company employees in order to form bonds between coworkers and improve productivity for the corporation as a whole.⁹⁵ It is unacceptable for an employee to refuse to work overtime or to take a vacation when there is unfinished work.⁹⁶ "Karoshi," a Japanese term which means "death from excessive work," illustrates the pressures placed on the Japanese to work long hours.⁹⁷

⁹⁰ See *id.*

⁹¹ See BOYE DEMENTE, JAPANESE ETIQUETTE AND ETHICS IN BUSINESS (1987) (reporting that when a Japanese employee is asked about his occupation he is most likely to respond that he is a member of his corporation rather than his trade).

⁹² Employers normally provide their employees with housing, transportation, meals, and vacation facilities. See Knapp, *supra* note 81, at 91.

⁹³ See *id.* at 91-92 (discussing the loyalty and commitment expected of employees); Goff, *supra* note 24, at 1149 (examining the willingness of Japanese employees to "devote their undivided allegiance to their employer."). See David C. Hulme, *Women in the Workplace—Going Their Own Way*, AM. CHAMBER COM. JAPAN J., Nov. 1, 1996.

⁹⁴ See Kukuk, *supra* note 60, at 197; see also Goff, *supra* note 24, at 1161-62; Hulme, *supra* note 93; Knapp, *supra* note 81, at 93 (discussing Japanese companies refusal to invest in women employees).

⁹⁵ See Goff, *supra* note 24, at 1150 (discussing the importance of after work socialization).

⁹⁶ See Knapp, *supra* note 81, at 92 (citations omitted) (indicating that an employee's refusal to work overtime will jeopardize her chances of promotion, and reporting a 1991 Supreme Court case that was found that an employer was justified in dismissing an employee who once refused to work overtime).

⁹⁷ Hamabe, *supra* note 42, at 320 (indicating that "some people have died of heart failure or stroke due to extremely excessive work").

The pressure of this work commitment prohibits women in Japan from attaining the same status as their male counterparts. Since Japanese culture requires women to care for their families and maintain their homes,⁹⁸ it is nearly impossible for working women to maintain also their commitment to the corporate family.

3.1.2. *Seniority System in the Japanese Workplace*

Since Japanese businesses expect an employee to make a lifetime commitment, the potential number of years an employee can work are considered extremely important to their success in the business world.⁹⁹ That is, a young man who has the potential to work for a corporation for thirty years is more likely to succeed financially and professionally than a young woman who will soon marry and thus only has the potential to work for two or three years. Furthermore, wage increases and promotions are based on length of employment.¹⁰⁰ Most Japanese corporations use the seniority system as a means "to eliminate . . . competition among workers and to heighten company loyalty."¹⁰¹ Because women are unable to work a significant number of years, employers often deny wage increases and promotions to them.¹⁰² Continuous employment in a Japanese corporation is essential to succeed in business, and women who spend a short period of time in the workplace are unable to achieve a measure of comparable success vis-à-vis their male peers.¹⁰³

⁹⁸ In *Ross v. Nikko Sec. Co. Int'l*, 53 Fair Empl. Prac. Cas. (BNA) 1121 (S.D.N.Y. 1990), female employees claimed that the Japanese subsidiary discriminated against women because only one thirty-fourth of the managerial positions were held by women. During the trial Susan Minshkin, a former employee of Nikko, testified that "[s]ingle women were frequently asked about their future marriage plan, on one hand as encouragement to marriage, on the other to assess when the women would be leaving the company." See Knapp, *supra* note 17, at 189.

⁹⁹ In Japanese the notion that the "potential number of years someone can work are of major importance to their success in the business world" is referred to as "nenko joretsu." Goff, *supra* note 24, at 1150.

¹⁰⁰ See Knapp, *supra* note 81, at 91.

¹⁰¹ Knapp, *supra* note 17, at 209.

¹⁰² Women workers earn 60% of what men make because of their non-core positions and shorter years of service. See Young, *supra* note 25, at 8.

¹⁰³ See *id.*

3.1.3. *Core and Non-Core Employment in the Japanese Workplace*

Lastly, the actual structure of the Japanese employment system is quite unfriendly to women. The Japanese employment system is divided into two tracks which are commonly referred to as core and non-core.¹⁰⁴ Core employees, also known as career-track employees or *sogoshoku*,¹⁰⁵ are usually recruited and expected to make a lifetime commitment to the corporation.¹⁰⁶ Because these employees make a lifetime commitment to the corporation, the corporation invests a significant amount of time and money into their training and development.¹⁰⁷ Non-core employees, also known as clerical staff or *ippanshoku*,¹⁰⁸ are considered temporary and are hired on a yearly basis.¹⁰⁹ As a result, corporations may discharge non-core employees at any time. Overall, non-core employees are not expected to make a lifetime commitment to their job.¹¹⁰ A large majority of Japanese females who work outside the home occupy non-core, clerical positions.¹¹¹ Because women are unable to make a lifetime commitment to their employment as a result of their familial obligations, they are usually forced into non-core positions and are unable to succeed.¹¹² Japanese employers often argue that women have certain characteristics¹¹³ that make them unsuitable for core employment and justify a preference to hire men. Women in non-core positions have no job security, receive low wages, and have no chance of advancement.¹¹⁴ Even those women who are able to

¹⁰⁴ See Goff, *supra* note 24, at 1151.

¹⁰⁵ See Hulme, *supra* note 93.

¹⁰⁶ See Goff, *supra* note 24, at 1149.

¹⁰⁷ See Hulme, *supra* note 93.

¹⁰⁸ See Goff, *supra* note 24, at 1151.

¹⁰⁹ See *id.*

¹¹⁰ See Hulme, *supra* note 93; see also Knapp, *supra* note 81, at 93 (discussing Japanese companies' refusal to invest time and money into women employees).

¹¹¹ See Goff, *supra* note 24, at 1153 (discussing the inability of women, even college educated women, to obtain core status).

¹¹² See *id.* at 1153-54.

¹¹³ See Knapp, *supra* note 81, at 93 (reporting the results of a survey where employers stated that women's shorter lengths of service, domestic responsibilities, and lack of aspirations all contributed to employers' practice of not hiring women).

¹¹⁴ See Goff, *supra* note 24, at 1151-53 (discussing the problems faced by women in non-core positions).

obtain core positions often receive tasks usually given to non-core employees.¹¹⁵

Many women in the labor force, who are often forced to act as assistants to their male counterparts are derisively called "office flowers."¹¹⁶ Female employees are regularly asked to make tea, answer telephones, clean desks, and make copies.¹¹⁷ Training in tea service and etiquette is often part of a female employee's experience.¹¹⁸

Japanese society's resistance to the advancement and equal treatment of women is exemplified by the treatment of women who do, in fact, occupy core employment positions. Women in core positions advance more slowly, are rarely placed in positions of responsibility, and almost never achieve management level.¹¹⁹

Several additional aspects of the Japanese business culture make it difficult for women to succeed in the Japanese workplace. Employers blatantly discriminate against women by hiring women based only on their age and appearance, paying women lower wages, requiring that women retire once they marry, and limiting women's work to office chores.¹²⁰ Moreover, when women are hired, they are evaluated on their physical appearance, ability to please the male employees, and other non-qualitative criteria.¹²¹

Because many women are hired based solely on their physical appearance,¹²² some women have had cosmetic surgery to im-

¹¹⁵ For example, even women in core positions are expected to "serv[e] tea to their male colleagues and com[e] in early to tidy the office." Goff, *supra* note 24, at 1154.

¹¹⁶ This phrase is known in Japanese as *shokuba no hana*. See Knapp, *supra* note 81, at 89

¹¹⁷ See *id.* at 90.

¹¹⁸ See *id.*

¹¹⁹ See Goff, *supra* note 24, at 1154.

¹²⁰ See generally Knapp, *supra* note 81, at 89 (discussing obstacles women encounter in the workplace).

¹²¹ For example, interviewers have asked women if they are married or have boyfriends. See Hugo Gurdon, *Short Skirt Route to Job Short List*, DAILY TELEGRAPH 17, Sept. 16, 1994; *Workplace Sexual Harassment Normal for Women in Japan* (National Public Radio broadcast July 21, 1996), at 17, available in 1996 WL 12725923 [hereinafter NPR Transcript] (noting that young women report being asked questions during job interviews about the color of their undergarments and their availability as a mistress).

¹²² See NPR Transcript, *supra* note 121 (discussing the enormous emphasis placed on a women's physical appearance in the hiring process).

prove their appearance and thus increase their chances of finding a job.¹²³ Once hired, employers often require that female employees live with their family because they believe this will keep them “tame” and disciplined.¹²⁴

To keep women out of the workplace, Japanese employers often make travel and geographic mobility a condition of employment.¹²⁵ Although geographic mobility is feasible for male businessmen, it is completely impractical for women who most likely have societal obligations to care for their families.¹²⁶

Furthermore, Japanese society makes it impossible for a woman to take a leave of absence from work for marriage or raising a family and still retain her position in the corporation. Rather, a woman is forced to leave her employment and return after marriage or childbirth to a non-core position even though she is committed to her job in the same manner as a core employee.¹²⁷ Many employers require women to sign an agreement that they will resign upon getting married or having a child.¹²⁸ Although forced retirement upon marriage is illegal,¹²⁹ many companies continue to enforce this traditional business custom.¹³⁰ Furthermore, once a woman is married and has a child it becomes more difficult for her to obtain a job.¹³¹

¹²³ See Leslie Helm, *Women Fight Stereotypes— and Knuckle Under*, L.A. TIMES, June 29, 1993, at H4 (discussing the increasing number of young, university women having operations at a Japanese hospital famous for cosmetic surgery); Knapp, *supra* note 81, at 89 n.94 (discussing the prevalence of cosmetic surgery among career women).

¹²⁴ See Knapp, *supra* note 81, at 89.

¹²⁵ See Goff, *supra* note 24, at 1162.

¹²⁶ See *id.*

¹²⁷ See Frank K. Upham, LAW AND SOCIAL CHANGE IN POSTWAR JAPAN 126 (1987).

¹²⁸ Knapp, *supra* note 81, at 90.

¹²⁹ See Catherine W. Brown, *Japanese Approaches to Equal Rights for Women: The Legal Framework*, in LAW AND SOCIETY IN CONTEMPORARY JAPAN 197 (John O. Haley ed., 1988) (analyzing Sumitomo Cement Co., 17 RÖMINSHŪ 1407 (Tokyo Dist Ct., Dec. 20, 1996) where the court held that requiring women to retire from their employment upon marriage was illegal).

¹³⁰ See Hamabe, *supra* note 42, at 325-26

¹³¹ When a married woman with a three-year-old child applied for a position which required travel, the shocked personnel manager, stated, “Your child is at a vital stage in his development . . . [a]nd you would leave him alone with your husband? I certainly wouldn’t stand for my wife being transferred overseas. There is simply no need for a woman to be dedicated to her work to that extent.” Hoffman, *supra* note 60.

3.1.4. *The Persistence of Women in the Workplace*

Although discrimination against women persists in Japan, the number of working women in Japan has increased in recent years.¹³² In 1997, the female workforce increased by 180,000, and the total number of working women reached 27.19 million.¹³³ Furthermore, more women are in management positions¹³⁴ and in professional and technological jobs¹³⁵ than ever before. Many women have ignored the most prestigious Japanese corporations and instead focused their employment efforts on smaller companies.¹³⁶ A number of women have chosen to build their own business.¹³⁷ In fact, fewer women are following Japanese tradition and removing themselves from the workforce between the ages of twenty-five and thirty-four to marry and bear children.¹³⁸ The increased presence of women in the workforce is due to several factors such as increased advancements in women's education,¹³⁹

¹³² See Knapp, *supra* note 81, at 94 (reporting that in 1993 there were 20,090,000 working women in Japan, composing more than one-third of the Japanese labor force); see also Nancy Patterson, *No More Naki-Neiri? The State of Japanese Sexual Harassment Law: Judgment of April 16, 1992, Fukuoko Chihō Saibansho, Heisei Gannen (1989) (wa) No. 1872, Songai Baishō Jiken (Japan)*, 34 HARV. INT'L L.J. 206, 207 (1993) (noting that the "growing number of women in the Japanese workplace has undermined the traditional Japanese role of women as homemakers and full-time nurturers of children").

¹³³ See 1997 *White Paper on Working Women*, JAPAN LAB. BULL., Apr. 1, 1998, at 2, 2.

¹³⁴ In 1990 female employees in Japan held 9.2% of the managerial jobs, a 7 percentage point increase since 1950. See 1995 *White Paper on Working Women*, *supra* 82; see also Knapp, *supra* note 81, at 94. Despite the increase of women managers in Japan, critics comment that Japan is "[l]ight years behind even Asian neighbors like Hong Kong, Singapore, and the Philippines in terms of participation by women in management." Hulme, *supra* note 93.

¹³⁵ Women in professional and technological jobs increased from 30.5% in 1950 to 42.4% in 1990. See 1995 *White Paper on Working Women*, *supra* note 82, at 1.

¹³⁶ See Hulme, *supra* note 93 (reporting that "smaller and newer" Japanese companies appear more hospitable to women).

¹³⁷ See *id.* (noting the entrepreneurial movement among Japanese women).

¹³⁸ See Kukuk, *supra* note 60, at 195-96.

¹³⁹ See *id.* at 196 (stating that improved education opportunities have contributed to the increased number of women in the workplace).

changing economics,¹⁴⁰ the labor shortage, and the aging population.¹⁴¹

Recently, Toyota Motor Corporation ("Toyota") announced its plans to increase the number of women workers in response to the declining birth rate and aging population in Japan.¹⁴² It is likely that other corporations will follow Toyota's lead and begin hiring more women. Furthermore, women's increased life expectancy, and awareness about their rights, and the increase in the number of women entering universities have led to an increase in the number of working women.¹⁴³

Even though the number of working mothers surpasses those who choose to stay at home,¹⁴⁴ those who work outside the home still receive a great amount of societal pressure to stop working while caring for a family.¹⁴⁵ This pressure has led working mothers to feel guilty about their decision to work both inside and outside of the home.¹⁴⁶

4. JAPAN'S LEGISLATIVE RESPONSES TO SEXUAL HARASSMENT

Ironically, Japan's laws prohibiting gender discrimination have been in place longer than those of many nations. For exam-

¹⁴⁰ See Patterson, *supra* note 132, at 207 (indicating that changing economic conditions in Japanese cities often require that both husband and wife work to make ends meet).

¹⁴¹ See *id.* (indicating that Japan's aging population and labor shortage is forcing Japanese corporations to hire women in order to maintain their production).

For a detailed discussion of the changing Japanese corporate culture see *infra* notes 227-250 and accompanying text.

¹⁴² *Toyota Motor Targets Female Workers for Production Lines*, DOW JONES JAPAN REP., Jan. 5, 1998 (reporting a Toyota Motor Corporation plan to increase its skilled female workers from 350 to over 1,000 within the next four or five years).

¹⁴³ See Knapp, *supra* note 81, at 94.

¹⁴⁴ See *1995 White Paper on Working Women*, *supra* note 82, at 1 (reporting that in 1990 the percentage of dual-income households exceeded the percentage of those households with full-time housewives).

¹⁴⁵ See *Working Mothers in Japan Battle Social Pressure*, JAPAN WKLY. MONITOR, Jan. 6, 1997 (describing a scenario where a grandmother expressed her belief that "children should be raised by their mothers and that full-time day-care centers do not take good care of children.").

¹⁴⁶ See *id.* ("Working mothers tend to blame themselves for not being able to spend a lot of time with their children."). During an orientation for working mothers, a woman began crying over the guilt she felt from leaving her child to go to work. See *id.*

ple, Title VII of the Civil Rights Act of 1964,¹⁴⁷ which is the primary equal employment opportunity law in the United States, is seventeen years younger than the Japanese law prohibiting gender discrimination. Although the Japanese Constitution, Civil Code (as interpreted by the courts) and the EEOC prohibit gender discrimination, none explicitly prohibit sexual harassment.¹⁴⁸ Because there is no legislation that explicitly prohibits sexual harassment, some courts have concluded that sexual harassment is a form of sex discrimination,¹⁴⁹ while others have seen sexual harassment as a tort.¹⁵⁰

4.1. *The Japanese Constitution*

The Japanese Constitution fails to provide female employees with a workplace free of sexual harassment.¹⁵¹ Adopted in 1947, Article 14 of the Japanese Constitution declares all persons equal and prohibits discrimination in "political, economic, or social relations because of race, creed, sex, social status or family origin."¹⁵² Although the Japanese Constitution appears to be an excellent source of protection for women who are victims of discrimination, Article 14 has been interpreted to require state action¹⁵³ and has therefore been limited to advancing women's

¹⁴⁷ 42 U.S.C. §§ 2000e-/2000e-17 (1994).

¹⁴⁸ See, e.g., KENPō art. 14, para. 1; LAW NO. 89, art. 90; Equal Employment Opportunity Law. See generally Patterson, *supra* note 132, at 211 (summarizing Japanese legislation addressing sexual harassment).

¹⁴⁹ Although the United States does not have an enactment specifically prohibiting acts of sexual harassment, Title VII of the Civil Rights Act of 1964 does have a general prohibition against discrimination on the basis of sex. 42 U.S.C. 2000e-2(a) (Supp. II 1994). Furthermore, in 1986, the Supreme Court of the United States held that sexual harassment can constitute discrimination on the basis of sex and therefore violates Title VII. See *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 66 (1986).

¹⁵⁰ Law No. 89, art. 709.

¹⁵¹ KENPō art. 14, para. 1.

¹⁵² *Id.*

¹⁵³ In *Takano v. Mitsubishi Plastics Co.*, 27 MINSHŪ 1536, 1556 (1973), the Japanese Supreme Court held that Article XIV of the Japanese Constitution does not apply directly to private parties, rather application of this Article requires state action. See generally Michael S. Bennett, *Gender-Based Employment Discrimination in Japan and the United States*, 15 LOY. L.A. INT'L & COMP. L.J. 149, 153 (1992) (reporting on the failure of the Japanese Constitution to protect employees of private employers from discrimination); Goff, *supra* note 24, at 1155 (stating that Article 14 of the Japanese Constitution cannot be used

status in the public sector.¹⁵⁴ It follows that Article 14 cannot be used to protect the rights of women who have been discriminated against in private employment.

4.2. *The Japanese Civil Code*

Article 90 of the Japanese Civil Code states that “[a] juristic act which has for its object such matters that are contrary to public policy or good morals is null and void.”¹⁵⁵ Japanese courts have interpreted the maintenance of public policy to include the equality between men and women.¹⁵⁶ For example, in *Sumitomo Cement*,¹⁵⁷ the Japanese Supreme court held that sex discrimination in employment is contrary to “public order or good morals” and therefore violates Article 90 of the Civil Code.¹⁵⁸

Due to judicial activism, Article 709 of the Civil Code¹⁵⁹ provides redress for sexual harassment victims in Japan.¹⁶⁰ Article 709 states that a person who unlawfully infringes upon another person’s right is liable for damages. Case law indicates that when sexual harassment constitutes defamation, invasion of privacy, assault, or battery, it infringes upon a protected right and constitutes a tort.¹⁶¹ For example, in the Fukuoko sexual harassment

to protect an employee from the actions of a private employer); Upham, *supra* note 127, at 130 (examining the state action requirements of Article 14).

¹⁵⁴ Knapp, *supra* note 81, at 97 (reporting that since 1981, women have been placed in government positions that were formerly reserved for men).

¹⁵⁵ Law No. 89, art. 90.

¹⁵⁶ See Goff, *supra* note 24, at 1155-56; Patterson, *supra* note 132, at 211; Marc Lim, Comment, *The First Step Forward-The AIDS Dismissal Case and the Protection Against AIDS-Based Employment Discrimination in Japan*, 7 PAC. RIM. L. & POL’Y J. 451, 469 (1998).

¹⁵⁷ See *supra* note 129 and accompanying text.

¹⁵⁸ Lim, *supra* note 156, at 470.

¹⁵⁹ Law No. 89, art. 709.

¹⁶⁰ See generally Patterson, *supra* note 132, at 218 (describing case law that characterized sexual harassment as violating the “right to privacy” and “the right to a non-hostile working environment”); Lim, *supra* note 156 (discussing the importance of Section 709 of the Civil Code in recognizing sexual harassment).

¹⁶¹ Several Japanese courts relying on Section 709 of the Civil Code have found employers liable for sexual harassment. See, e.g., Judgment of Dec. 20, 1990 (Shizuoko Sexual Harassment Case, Shizuoko Dist. Ct.), 745 Hanrei Taimuzu 238 (1991); Judgment of Apr. 16, 1992 (Fukuoka Sexual Harassment Case, Fukuoko Dist. Ct., 783 HANREI TAIMUZU 60 (1992); Judgment of August 29, 1995 (Osaka Sexual Harassment Case, Osaka Dist. Ct.), 893 HANREI TAIMUZU (1996).

case, relying on Article 709, the court held that verbal sexual abuse against a female employee constituted an invasion of privacy and therefore violated the Japanese Civil Code.¹⁶² The court also set ground-breaking precedent by finding the company liable under Civil Code Section 715 for violating an employee's rights to work in a "non-hostile working environment."¹⁶³ Subsequent cases have followed the Fukuoko Court's reasoning that sexual harassment may constitute a tort under Civil Code Section 709.¹⁶⁴

Although the Civil Code does provide a woman who has been sexually harassed with a legal basis on which to bring a lawsuit, it still fails to recognize sexual harassment as a legal wrong. Rather, the Civil Code merely forces a woman to disguise sexual harassment as defamation, invasion of privacy, assault and battery, etc., and thus does not explicitly recognize sexual harassment as a legal wrong.

4.3. *Japan's Equal Employment Opportunity Law*

In response to Japan's international pledge to meet a United Nations' goal of achieving equal rights for women by 1985,¹⁶⁵ and women's protests against discrimination¹⁶⁶ the Japanese Ministry of Labor enacted the Equal Employment Opportunity Law ("EEOL") on May 17, 1985.¹⁶⁷ The EEOL aims to protect women from discriminatory employment practices in hiring and recruitment, job assignment and promotion, training and development, fringe benefits, mandatory retirement age, resignation, and dismissal.¹⁶⁸ The act only explicitly prohibits discrimination in the areas of dismissal, retirement, fringe benefits, and voca-

¹⁶² See Judgment of Apr. 16, 1992 (Fukuoka Sexual Harassment Case, Fukuoko Dist. Ct., 783 HANREI TAIMUZU 60 (1992)).

¹⁶³ See *id.* Section 715 of the Civil Code states that "a person who employs another to carry out an undertaking is bound to make compensation for damage done to a third person by the employee in the course of the undertaking . . ." Law No. 89, art. 715, no. 1.

¹⁶⁴ See Kukuk, *supra* note 60, at 203-04.

¹⁶⁵ *Convention on the Elimination of all Forms of Discrimination Against Women*, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1979).

¹⁶⁶ During the United Nations Decade for Women (1976-1985) the issue of discrimination against women was recognized as an international problem.

¹⁶⁷ Equal Employment Opportunity Law, art 1.

¹⁶⁸ See *id.*

tional training.¹⁶⁹ In the areas of recruitment, job assignment, and promotion, EEOL employers merely have “the duty to endeavor” to treat men and women equally.¹⁷⁰ The law does not expressly prohibit employers from discriminating against women in recruitment, hiring, assignment, and promotion; rather, employers are only “asked” to make a good faith attempt to maintain equality in a few specific employment categories.¹⁷¹ Both the Ministry of Labor and the Japanese government thought that requiring employers to eliminate discrimination in recruitment, hiring, assignment, and promotion would undermine the cultural notion of lifetime employment.¹⁷²

Moreover, the anti-discrimination law has no effective mechanism for dispute resolution. Instead of implementing a private cause of action or criminal sanctions, the EEOL only provides for voluntary settlement of disputes between employers and employees.¹⁷³ The law prescribes three levels of dispute resolution: (1) in-house and voluntary resolution; (2) dispute resolution with the assistance of the administrative agency, Women’s and Young Workers’ Office; and (3) mediation conducted by the Equal Opportunity Mediation Commission.¹⁷⁴ Women who have suffered workplace discrimination are encouraged to contact the local Women’s and Young Workers’ Office.¹⁷⁵ This administrative agency often advises women and employers to reach a voluntary settlement.¹⁷⁶ If a voluntary settlement is not feasible, then the agency investigates the alleged discrimination and then advises the parties.¹⁷⁷ If after conducting an investigation, the Women’s and Young Workers’ Office determines that further action is necessary, they may refer the case to the Equal Opportunity Mediation Commission.¹⁷⁸ Although the Mediation Commission may

¹⁶⁹ See *id.*

¹⁷⁰ See *id.*

¹⁷¹ *Id.*

¹⁷² See Japan External Trade Organization, JETRO Nippon Business Facts and Figures 125 (1994) [hereinafter JETRO].

¹⁷³ See *id.*

¹⁷⁴ See generally Knapp, *supra* note 81, at 118 (discussing the three steps to resolving a dispute).

¹⁷⁵ See *id.*

¹⁷⁶ See *id.* at 119.

¹⁷⁷ See *id.*

¹⁷⁸ See *id.*

make a decision, the parties are not bound by it.¹⁷⁹ Moreover, mediation can only occur after both parties consent to the process. If an employer refuses to mediate, the mediation process halts and the EEOL becomes useless for the alleged victim.

4.3.1. *Effectiveness of the EEOL*

The EEOL has been in effect for more than ten years. When it was enacted, the EEOL received kudos from scholars who viewed the law as a novel approach to gender equality in a society laden with discriminatory practices.¹⁸⁰ Many applaud the EEOL for its gradual approach and insistence on voluntary compliance.

The EEOL is credited with increasing women's awareness of sexual harassment. Optimists praised the EEOL for decreasing the amount of discriminatory language found throughout Japan. For example, some have noticed gender neutrality in help-wanted advertisements.¹⁸¹ However, Japanese magazines and newspapers continue to publish help-wanted ads only for males and impose maximum and minimum age requirements for women, indicating the level of awareness still needs to be raised.¹⁸²

4.3.2. *Criticisms of the EEOL*

Despite the government's claim that the EEOL has made major improvements for women in the workplace, many call the law "toothless"¹⁸³ in eradicating discrimination against women.¹⁸⁴

¹⁷⁹ See *id.*

¹⁸⁰ See generally Goff, *supra* note 24, at 1147-48 (reporting that scholars were excited about the potential of the Equal Employment Opportunity Law); Loraine Parkinson, *Japan's Equal Employment Opportunity Law: An Alternative Approach to Social Change*, 89 COLUM. L. REV. 604, 639 (1989) (suggesting that the Equal Employment Opportunity Law will be well received and will achieve success).

¹⁸¹ See Knapp, *supra* note 81, at 111.

¹⁸² See *id.* at 111-12 (reporting that the Ministry of Labor's effort to decrease the amount of discriminatory language found in help-wanted advertisements was futile).

¹⁸³ See Hulme, *supra* note 93 (noting that the EEOL failed to "open the way for promotion, challenging careers and full participation [of women] in the management of corporate Japan.")

¹⁸⁴ See *id.* (reporting that Japanese women are aware that the EEOL has failed to achieve equality in the workplace); see also Tomoko Otake & Mayumi Negishi, *Japan's Human Rights Records Lambasted*, JAPAN TIMES, Oct. 28, 1998, available in LEXIS, News Library, Jtimes File (noting the failure of the government to eliminate discrimination against women).

One scholar stated that the EEOL was an "heirloom sword that is no more than an ornament or a prestige symbol used to make Japan appear respectable in Western eyes."¹⁸⁵ Japanese women continue to be ostracized in the Japanese workplace and are unable to achieve managerial status.¹⁸⁶

Some believe that the actual structure of the EEOL is its biggest weakness.¹⁸⁷ Helen A. Goff suggests that the Ministry of Labor restructure the EEOL to provide a clearer definition of discrimination and to place sanctions on employers who fail to comply with the law.¹⁸⁸ Furthermore, Goff suggests that the law aggressively challenge the well-established cultural barriers to gender equality in the Japanese workplace.¹⁸⁹ For Japan to improve its position among industrialized nations on the issue of gender equality in the workplace, the EEOL must be restructured to be less tolerant of discrimination in employment and more accommodating of family pressures. An examination of the EEOL indicates that both the Ministry of Labor and the Japanese government thought that requiring employers not to discriminate in recruitment, hiring, assignment and promotion would undermine the cultural notion of lifetime employment.¹⁹⁰

The EEOL's lack of standards and objectives undermines the establishment of gender equality.¹⁹¹ For example, the ambiguities within the EEOL allow employers to have policies that appear gender neutral, but are discriminatory in intent and result. Despite the EEOL, employers often require that applicants have college degrees in certain traditionally male-dominated academic areas to hide their intentions of excluding women from the job.

¹⁸⁵ See Knapp, *supra* note 81, at 88 (quoting Jan M. Bergeson & Kaoru Yamamoto Oba, *Japan's New Equal Employment Opportunity Law: Real Weapons or Heirloom Sword*, 1986 B.Y.U. L. REV. 865, 865 (1986)).

¹⁸⁶ See JETRO, *supra* note 172 (reporting that in 1992, women in Japan occupied 1% of the managerial positions, whereas in 1991, women in the United States occupied 11.1% of the managerial positions); see also Otake & Negishi, *supra* note 184 (reporting that women comprise only 7.6% of the Diet).

¹⁸⁷ See Knapp, *supra* note 81, at 87 (indicating that some of the problems that have led to the ineffectiveness of the EEOL are found directly in its doctrine).

¹⁸⁸ See Goff, *supra* note 24, at 1166-67.

¹⁸⁹ See *id.*

¹⁹⁰ See JETRO, *supra* note 172.

¹⁹¹ See *id.* at 115.

Although this practice violates the EEOL, it is nearly impossible to prove a discriminatory motive.¹⁹²

It is clear that the "endeavor" provision found in the EEOL facilitates the perpetuation of discriminatory practices. The EEOL's lack of sanctions against employers who violate the EEOL makes compliance with the law completely voluntary. Because losing in a sexual harassment lawsuit may only cost a Japanese company \$18,000 to \$25,000, there is no threat of high damages to motivate them to develop and implement sexual harassment policies.¹⁹³ The EEOL has been described as a "compromise between the pressure to comply with the Convention [on the Elimination of Discrimination Against Women] and the unwillingness of the business community to concede anything which might affect industrial productivity and profit."¹⁹⁴

Although some have praised the EEOL's non-confrontational and cooperative approach to gender equality as adequate for a country like Japan, which values harmony and conformity,¹⁹⁵ the EEOL has proved itself ineffective at eradicating gender discrimination in the workplace.¹⁹⁶ As one commentator noted, "Japan's concern for its own global image played a vital role in the passage of the EEOL."¹⁹⁷ Because the law was enacted at a time when the Japanese business culture was unwilling to challenge its cultural bias, the effectiveness of the legislation has been minimal.

The EEOL does not seriously challenge the Japanese culture and employment system that discriminates against women. Although a statute that fails to consider the culture to which it will be applied is problematic, laws that are written within the confines of a rigid culture can be just as ineffective at effecting change. The EEOL fails to disrupt the social discrimination that Japanese women face. It is because the EEOL was drafted with the Japanese business and social culture in mind that it was destined to fail.¹⁹⁸ The law does nothing to challenge the gender stereotypes and discrimination that plague Japan. The business

¹⁹² See *id.* at 117.

¹⁹³ See NPR Transcript, *supra* note 121.

¹⁹⁴ Knapp, *supra* note 81, at 107 (quoting Masako Kamiya, *Women in Japan*, 20 U.B.C. L. REV. 447, 460 (1986)).

¹⁹⁵ Goff, *supra* note 24, at 1160.

¹⁹⁶ See *id.*

¹⁹⁷ Knapp, *supra* note 81, at 108.

¹⁹⁸ See Goff, *supra* note 24, at 1163.

and social culture of the Japanese must be challenged to some degree in order for the nation to see a move toward gender equality in employment.

4.3.3. *Amendments to the Equal Employment Opportunity Law*

In response to the increasing complaints and apparent ineffectiveness of the EEOL, the Diet approved a bill on June 11, 1997, revising the EEOL; the bill is set to take effect on April 1, 1999.¹⁹⁹ The amendments to the EEOL seek to significantly change employment equality in Japan. Whereas the current EEOL only asks companies to make a good-faith effort not to discriminate against women in recruitment, employment, job assessment, and promotion,²⁰⁰ the revised law absolutely bans gender discrimination.²⁰¹

Furthermore, the revised EEOL specifically addresses sexual harassment, requiring companies to take proactive measures aimed at this problem in the workplace.²⁰² Under the revised EEOL, employers must take the necessary care to ensure that female workers are not subject to a hostile working environment because of sexual harassment.²⁰³ Under the amended law, the employer must make efforts to prevent both quid pro quo and hostile working environment sexual harassment. The Labor Ministry will develop administrative guidelines that will assist employers

¹⁹⁹ See Act Concerning the Protection of Equal Opportunity for Men and Women in the Field of Employment (last amended, Law. No. 92 of 1997) [hereinafter Revised Equal Employment Opportunity Law or Revised EEOL]; see, e.g., *Bill Enforces Ban on Discrimination*, DAILY YOMIURI, June 12, 1997 (reporting on the recent approval of revisions to the EEOL by the Japanese upper and lower houses).

²⁰⁰ See Equal Employment Opportunity Law, arts. 7-8 (stating that employers "shall endeavor" to treat women and men equally).

²⁰¹ See Revised EEOL, arts. 5-6 (mandating that employers "shall not discriminate") (emphasis added); see also *Bill Enforces Ban on Discrimination*, *supra* note 199.

²⁰² [T]he employer must give necessary consideration to sexual speech or acts performed in the workplace, making sure that the working conditions of the female employee are not disadvantaged based on her reaction to such speech or acts, or that the employment environment of the female employee is not injured by such speech or acts.

Revised EEOL, art. 21, no. 1.

²⁰³ See *id.*

with compliance matters.²⁰⁴ The Ministry has indicated that a company's failure to comply with the revised legislation will face public condemnation along with a number of other sanctions,²⁰⁵ but has failed to state with specificity the type of punishment the employer will face.

Under the new legislation, female workers no longer need the consent of their employers to initiate the mediation process. Instead, females can independently demand a meeting with the mediation committee.²⁰⁶ Due to the increased autonomy available under the revised EEOL, the revisions please many Japanese female workers.²⁰⁷

4.3.3.1. *Criticisms of the Amendments to the Equal Employment Opportunity Law*

Because the amendments to the EEOL do not become law until April 1, 1999, one can only speculate as to their effectiveness with regards to eradicating sexual discrimination and harassment. Whether the new amendments contain adequate criteria for identifying the types of incidents which rise to the level of sexual harassment is questionable. The provision on sexual harassment merely refers to adverse treatment and disturbances of the work environment because of sex-related behavior. It is not yet known how this will be interpreted. The requirement that employers make an effort to prevent sexual harassment is similar to the toothless ban on discrimination found in the 1985 EEOL. While the amendments suggest employers should make an effort to eliminate sexual harassment, the law falls short of outlawing sexual harassment and discrimination.

Further, the revised EEOL does not vest the power to enforce the law in any agency, nor does it contain provisions to punish employers who violate the law. Future legislation must specifi-

²⁰⁴ See *id.* at art. 21, no. 2 (stating that the Minister of Labor should establish guidance for employers).

²⁰⁵ See *id.* at art 26.

²⁰⁶ See *id.* at art 12, no. 1 (announcing that resolution assistance will be offered "upon a request . . . on the part of both or one of the parties."); see also *Bill Enforces Ban on Discrimination*, *supra* note 199.

²⁰⁷ Women's groups who protested the current EEOL and claimed that it was ineffective are pleased with the EEOL revisions. See *id.*

cally provide for enforcement.²⁰⁸ For example, the establishment of a special court with technical expertise in labor matters would improve the effectiveness of Japanese laws against sexual harassment.²⁰⁹

Many believe that the Japanese government's policy against sexual harassment should go further in increasing awareness and eliminating sexual harassment. For example, the National Personnel Authority ("NPA") issued a statement indicating that the government's policy against sexual harassment should apply to after-work social activities in addition to applying during the work day.²¹⁰ The NPA also urged ministries and agencies throughout Japan to develop their own sexual harassment regulations and preventive training programs.²¹¹

Although the revisions suggest a positive turn of events in Japan for women, it is important to remember that the current EEOL received a similar reaction.²¹² The resolution of the effectiveness of the amendments to the EEOL will be left to court interpretation. Until then the effectiveness of the revised EEOL cannot be fairly evaluated.

5. INTERNATIONAL AND NATIONAL FORCES PRESSURING JAPAN TO REEVALUATE THE TREATMENT OF WOMEN IN THE WORKPLACE

5.1. *The United States' Reaction to Gender Discrimination by Japanese Corporations on U.S. Soil*

Many Americans are hostile to growing economic activities by Japanese investors.²¹³ Due to the anti-Japanese sentiment in

²⁰⁸ See Charlotte Takahashi, *Chamber View: The Outdated Labor Laws*, AM. CHAMBER OF COM. JAPAN J., Mar. 1, 1997, available in 1997 WL 7196535 (suggesting modifications to Japanese labor laws).

²⁰⁹ See *id.*

²¹⁰ See *Sex Harassment Policy Should Apply After Work*, *supra* note 53. This statement will form the foundation for the NPA guidelines to be issued when the amendments to the EEOL go into force in April, 1999.

²¹¹ See *id.*

²¹² See *supra* note 180 and accompanying text.

²¹³ In 1982, two laid-off auto workers murdered a Chinese-American because of their anger toward the Japanese. Such American anger was further sparked by the sale of prohibited military technology to the Soviet Union by Japan's Toshiba Machine Co. allowing the Soviets to build submarines which were undetectable by U.S. acoustic devices. The U.S. suffered more than \$30

the United States, combined with the anticipated increase in employment discrimination litigation against Japanese companies,²¹⁴ Japanese corporations must protect themselves against claims of discrimination. If Japanese corporations passively allow themselves to be targeted by American workers, they may be driven out of the United States, losing much of their economic power.

The significant differences in the American and Japanese societal attempts at combating sexual harassment are evidenced by the problems Japanese MNEs face when they do business or establish subsidiaries in America. A survey by the Japanese Ministry of Labor reported that fifty-seven percent of the 331 companies operating in the United States are likely to face discrimination suits.²¹⁵ During Congressional Testimony, Equal Employment Opportunity Commission ("EEOC") Chairman Evan J. Kemp, Jr. discussed employment discrimination by Japanese-owned companies operating in the United States. He testified that, in 1990 alone, approximately 150 charges were filed against thirty-five Japanese-owned companies.²¹⁶ Thirty-four percent of the charges claimed sex discrimination and fourteen percent of the complaints alleged sexual harassment.²¹⁷ The EEOC Chairman was reluctant to draw any conclusions about Japanese business practices in the United States (*i.e.*, that Japanese companies are more likely to discriminate).²¹⁸ However, Paul Igasaki, EEOC Vice Chairman, stated that "Japanese companies need a fuller understanding of the American approach to preventing sexual harassment and fostering equal employment opportunity in general."²¹⁹

billion in damage. After the sale of the prohibited military technology, anti-Japanese movements spread across the United States. Some individuals boycotted Toshiba products and others used the opportunity to smash Toshiba cassette players with sledgehammers. See Knapp, *supra* note 17, at 192-193.

²¹⁴ See *id.* at 193.

²¹⁵ See *id.*

²¹⁶ See *Congressional Testimony by EEOC Chairman and OFCCP Deputy Director on Discrimination by Japanese-Owned Companies*, Daily Lab. Rep. (BNA) No. 142, at D-1 (July 24, 1991).

²¹⁷ See *id.*

²¹⁸ Chairman Kemp made it clear that the number of charges filed against Japanese-owned corporations constituted only 0.19% of the charges filed with the EEOC in 1990. See *id.*

²¹⁹ *EEOC Vice Chairman Igasaki Offers Advice on Workplace Policies During Japanese Trip*, Daily Lab. Rep. (BNA), No. 234, at D-9 (Dec. 5, 1996).

The problems Japanese corporations encounter when doing business in the United States are evidenced by the intensified desire on the part of Japanese companies to increase awareness about sexual harassment.²²⁰ In the survey conducted by the Japanese Ministry of Labor, over seventy percent of the Japanese firms operating in the United States have asked the Ministry for advice about “‘how to avoid ‘unnecessary’ trouble.”²²¹ Results from the study indicate that Japanese employers recognize the severity of the problem and the need to implement defensive strategies to protect themselves from discrimination suits.²²² Some Japanese corporations are implementing preventive measures to avoid discrimination charges. For example, a group of Japanese corporations have begun to use a video to educate their executives on how to act in the American business community.²²³ To maintain its economic position in the world,²²⁴ Japan must change its corporate culture and adopt alternative legislation to deal with discrimination in employment, specifically sexual harassment.²²⁵

5.2. *Changes Within Japan Are Forcing Increased Acceptance of Women in the Workplace and the Eradication of Sexual Harassment*

International criticism of Japanese employment practices is not the only motivating factor for Japanese corporations to adopt legislation to combat gender discrimination and sexual harass-

²²⁰ See Yates, *supra* note 17, at 1 (reporting that “increasing numbers of Japanese firms are trying to educate their own executives on how to behave in the American corporate environment.”).

²²¹ Knapp, *supra* note 17, at 193 (discussing the consequences of the findings of a study performed by the Japanese Ministry of Labor).

²²² See *id.*

²²³ See Yates, *supra* note 17, at 1 (depicting a conversation between a Japanese businessman and a female American executive).

²²⁴ Japan is experiencing a severe economic slump and must work hard to maintain its position in the economy. “[C]onsumer spending, which accounts for 65% of the gross national product, has been sluggish; and capital spending, which accounts for another 20%, has also been slow.” Takeuchi Yasuo, *The Troubled Economy*, 21 JAPAN ECHO 2 (1994); see also Knapp, *supra* note 17, at 204-05 (discussing Japan’s current difficulty in the world economy).

²²⁵ When Japan was a growing economic superpower the Japanese corporate culture remained unchallenged. Many Japanese praised the culture as the “source of the nation’s prosperity.” However, now that Japan is suffering from a severe economic downturn, pressure from within is causing Japan to revamp its employment system. See Knapp, *supra* note 17, at 204-05.

ment. Rather, internal unrest with Japanese corporations' treatment of women²²⁶ has also motivated the Japanese to make fundamental changes to promote workplace equality.

5.2.1. *Deterioration of the Lifetime Employment and Seniority System in the Japanese Workplace*

Both the lifetime employment and seniority system²²⁷ are less appealing to Japanese companies²²⁸ that seek to maximize their resources and get the most out of their employees.²²⁹ Employers are beginning to offer early retirement plans since such plans allow them to employ younger workers for less money, thus cutting costs.²³⁰ Some employers are beginning to automatically discharge employees at age fifty-five.²³¹ The deterioration of the lifetime employment system in Japan is coupled with the gradual disappearance of the seniority system.²³² Many employees are now able to negotiate their own individual salaries and no longer have their worth determined by the length of their employment within a corporation.²³³ A policy established by Honda Motor Co., Ltd. in 1992 allows managerial employees to negotiate their salary with the company based on individual performance and qualifications.²³⁴

The collapse of the lifetime employment and seniority system will likely help women enter the Japanese labor market more eas-

²²⁶ Many Japanese corporations have expressed their disgust with the current Japanese business structure. For example, the Sony chairperson, Akio Morita, stated that "Japanese-style management [has reached] the end of its usefulness." See *id.* at 205 (citing Osamu Katayama, *Back to the Drawing Board*, 39 LOOK JAPAN 4, 4 (1993)).

²²⁷ See discussion *supra* notes 89-103 and accompanying text.

²²⁸ See Knapp, *supra* note 17, at 206 (discussing the erosion of traditional aspects of the Japanese corporate culture).

²²⁹ See *id.*

²³⁰ See *id.* at 206-07 (explaining the implementation of early retirement policies in many Japanese companies as a means of dealing with the economic crisis in Japan).

²³¹ Honda Motors adopted a policy which terminates employees when they reach 55. Forty percent of large Japanese companies have adopted similar discharge policies. See *id.* at 207.

²³² For a discussion of the seniority system see *supra* notes 99-103 and accompanying text.

²³³ See Knapp, *supra* note 17, at 209 (discussing the eradication of the seniority system and the move toward employment based on merit).

²³⁴ See *id.*

ily. Moreover, there is a movement to eliminate work within Japanese companies that has traditionally been characterized as women's work.²³⁵ For example, proposals have sought to dispose of the assumption that making tea in the office is the exclusive duty of women employees, attempting to create a workplace where men and women "share the burden" of serving the tea.²³⁶ The movement to overcome ingrained customs of the workplace is evidence of a country trying to "blend" into the global economy and accommodate Western mentality. With the erosion of the lifetime employment system employers' tolerance for women entering and leaving the workforce is likely to increase. Overall, the deterioration of these two traditional aspects of Japanese corporate culture will move the workplace towards equality.

Currently, in Japan, there is much more job mobility; individuals from younger generations no longer feel compelled to stay in one firm for their entire career. Rather than devote their entire lives to a single company, young people desire to explore their individual potential by changing their occupations frequently. This marks not only a significant change in Japanese corporate culture, it also represents the ability of younger generations to make adjustments in the workplace to accommodate their needs. It also indicates the inability of elder Japanese corporate tycoons to retain the traditional Japanese corporate culture.

5.2.2. *Changes in the Japanese Economy*

Further transactions within Japan are causing Japanese corporations to reexamine their treatment of women.²³⁷ A recession in the Japanese economy is forcing many Japanese corporations to move away from the traditional Japanese business culture²³⁸ toward a system based on merit.²³⁹ Many corporations are realizing

²³⁵ See *Sex Harassment Policy Should Apply After Work*, *supra* note 53 (quoting Shigeki Nakamura, Chief of the Prefectural Office's Section for Human Rights stating "[m]aking tea has become the customary job of women. From the viewpoint of the equality of men and women, we want to change this.").

²³⁶ See *id.*

²³⁷ See Knapp, *supra* note 17, at 172 (discussing the social changes that are causing Japanese companies to operate under a merit system, rather than their traditional system of lifetime employment and wages based purely on seniority).

²³⁸ See discussion *supra* Section 5.2.1.

²³⁹ See Knapp, *supra* note 17, at 173.

that to revitalize the economy it is necessary to allocate human resources so as to maximize individual strengths.²⁴⁰

5.2.3. *The Aging Population and the Declining Birth Rate in Japan*

As in the United States, women in Japan are a "significant source of skilled workers."²⁴¹ Pervasive sexual harassment and discrimination against women in the workplace has caused this portion of the workforce to be ignored.²⁴² Thus, a valuable resource is lost. In an era when the Japanese population is getting older, the workplace leaner, and economics are changing,²⁴³ Japan cannot afford to continue ignoring women's needs.²⁴⁴ The aging Japanese population, along with the declining birth rate, will inevitably produce a labor shortage.²⁴⁵ The Ministry of Labor reported that in 1992, 12.6% of the population was composed of individuals over the age of sixty-five.²⁴⁶

Furthermore, declining birth rates plague Japan. The average birth rate was 1.57 in 1989,²⁴⁷ but dropped to 1.43 in 1997.²⁴⁸ Many attribute the declining birthrate to women's frustration with their obligations at home and inadequate daycare in Japan.²⁴⁹ With the decreasing labor force and the pressure to maintain a

²⁴⁰ Implicit in this notion of allocating human resources to maximize individual strengths is the consideration of Japanese women for work in positions not normally assigned to women. See *id.* at 173-74 ("Japan must confront the challenge of building global companies that are not only 'in the world,' but also 'of it.'") (emphasis in original).

²⁴¹ Takahashi, *supra* note 208.

²⁴² See *id.* (critiquing Japanese labor laws).

²⁴³ See *id.* (indicating that changing economic conditions in Japanese cities often require that both husband and wife work to make ends meet).

²⁴⁴ See Patterson, *supra* note 132, at 207 (suggesting that Japan's aging population and labor shortage is forcing Japanese corporations to hire women in order to maintain their position in the economy).

²⁴⁵ According to a Ministry of Labor Study, the Japanese population is aging faster than any other population in the world. See Rodo-Sho [Ministry of Labor], *Fujin Rodo Hakushyo* [*White Paper on Women's Labor*] 40 (1992) [hereinafter *White Paper on Women's Labor*].

²⁴⁶ Reports indicate that by the year 2000, the number of elderly persons in Japan will have reached six million. *Id.*

²⁴⁷ See Knapp, *supra* note 17, at 213 (reporting the findings of the Institute of Population Problems).

²⁴⁸ See 1997 *White Paper on Working Women*, *supra* note 133.

²⁴⁹ See *id.*

level of competitiveness with other economically powerful nations, Japanese companies can no longer ignore one half of the nation's population when trying to fill positions and maximize profit. In summary, the labor shortage will force Japanese companies to make the workplace a more suitable place for women.

5.2.4. *Changing Marriage and Family Structure in Japan*

The Japanese family is slowly changing. Expanded employment opportunities for women in Japan have allowed women the economic security they need to support themselves.²⁵⁰ Women no longer need to rely on the financial stability of a male once they finish their education. As a result, Japanese women get married later in life than they once did.²⁵¹ Some women even remain single into their thirties.²⁵² Moreover, because of the difficulties which arise when women try to balance work and marriage, marriage has become less attractive to many career-oriented women.²⁵³ Although the Japanese family structure is changing and moving away from traditional Japanese cultural norms, it is unlikely to resemble the Western family structure any time soon. Nonetheless, the changes that are occurring will assist women as they advance in society.

6. ALTERNATIVE METHODS TO COMBAT SEXUAL HARASSMENT ON AN INTERNATIONAL LEVEL

As the twenty-first century approaches the industrialized world needs a workable method for dealing with sexual harassment and discrimination against women in the workplace. The

²⁵⁰ See Tanaka, *Changing Marriage and Family Structure: Women's Perspective*, JAPAN LAB. BULL., Jan. 1, 1992, at 5, 5 [hereinafter *Changing Marriage and Family Structure*].

²⁵¹ According to the 1995 annual report on working women published by the Prime Minister's Office in 1994, the average age at which women married was at an all time high of 26.2 years of age, nearly three-and-a-half years later than women in 1947. See *1995 White Paper on Working Women*, JAPAN LAB. BULL., May 1, 1996, at 2, 2.

²⁵² See Tanaka, *supra* note 250 (indicating that women who wait until they reach their thirties to marry are less likely to give up their career upon marriage).

²⁵³ See *id.* (noting that marriage is a greater sacrifice for women than for men because women are required to balance the demands of work and family, whereas men obtain the ability to rely on their wives to fulfill familial commitments).

movement to an integrated and unified world is complicated. Since a "one size fits all" sexual harassment law is likely to prove ineffective for countries like Japan,²⁵⁴ the problem must be approached from a different perspective.

6.1. *Increased Awareness of the Problem of Sexual Harassment Through Education*

First, it is important that Japanese women are educated about sexual harassment and sex discrimination. Since discrimination is so imbedded in Japanese culture and norms, Japanese women must be taught about the need to achieve equality in the workplace and society. International women's movements, organizations and associations are proving very useful in educating and training women on their rights in the workplace and society in general.²⁵⁵ A "new generation of [Japanese] women" seems eager to increase awareness of sexual harassment.²⁵⁶ Although these Japanese women currently lack the legal weapons²⁵⁷ to fight for equality in the workplace, their determination and knowledge that discrimination is wrong is a move in the right direction. The international community must continue to educate Japanese women about their rights to equality and the ills of sexual harassment.

Furthermore, recognizing that women often face sexual harassment for the first time during their education,²⁵⁸ some Japanese

²⁵⁴ That is, countries where the culture is more difficult to change.

²⁵⁵ The 1995 United Nations Conference on the Elimination of Discrimination Against Women in Beijing asked nations to set up policies to deal with sexual harassment. "While the workplace may not be changing quickly, Japanese women are. 'Americans have the image of Japanese women keeping things inside. But I want you to know that young women are changing and starting to speak out.'" Sandra Sugawara, *The Office Problem Japan Winks at: Women Challenge Harassment and a Business Culture that Tolerates It*, WASH. POST, May 1, 1996, at A1.

²⁵⁶ See *id.*

²⁵⁷ For a discussion of the ineffectiveness of current Japanese legislation in eradicating sexual harassment in the workplace, see *supra* Section 4.

²⁵⁸ See Freitag, *supra* note 55 (discussing the pervasive sexual harassment in Japanese college's and universities); MacGregor, *supra* note 28 (reporting that a survey of women students at Shimane University in Japan revealed that 89% of the women had been sexually harassed at least once in their lifetime). But see *Few Universities Address Sexual Harassment*, DAILY YOMIURI, Nov. 24, 1998, at 3 (noting that only 6.6% of Japanese universities have established or will establish sexual harassment guidelines).

universities are beginning to heighten awareness on campus. At the University of Tottori, the engineering department has developed a brochure in an attempt to combat sexual harassment.²⁵⁹ The brochure contains examples of behaviors constituting harassment²⁶⁰ as well as procedures²⁶¹ to be followed when a complaint is filed. Increased awareness at the university level may lend itself to increased awareness in the workplace, a result that would greatly improve working conditions for women.

6.2. *Intolerance by Other Nations*

It is necessary for those countries that do have sexual harassment laws in place to make their intolerance of sexual harassment known to the MNEs that operate within their borders. The United States must continue to send the message to Japanese MNEs that sexual harassment will not be tolerated. Not only will America's intolerance force Japanese businesses to deal with the problem or risk losing their place in the global economy, but this will also notify Japanese women that sexual harassment is unacceptable. Other countries must follow the lead of the United States and declare their intolerance for the treatment of women by Japanese culture and companies.

For Japanese companies with subsidiaries in the United States, the Japanese Overseas Enterprise Association has developed a manual, that makes several suggestions for preventing sexual harassment in the workplace.²⁶² The manual contains several guidelines that prohibit calling women names such as "honey," "babe," and "girlie," telling obscene jokes, hanging up pornographic posters and calendars in the workplace, touching women, and asking females their age, marital status, and desire to have children.²⁶³ Although the manual was intended mainly for Japanese businessmen going to the United States, its guidelines are also meant

²⁵⁹ See *Campus Brochure Tackles Harassment*, Asahi Evening News broadcast, Mar. 5, 1997, available in 1997 WL 9788057.

²⁶⁰ Sexual remarks, unwanted touching and groping, and sexual conduct are a few of the twenty actions that constitute sexual harassment. See *id.*

²⁶¹ See *id.* (suggesting implementation of a panel to hear sexual harassment complaints).

²⁶² See *Japanese Businesses Launching Fight Against Sexual Harassment*, *supra* note 50, at 8.

²⁶³ *Id.*

to heighten awareness in Japan.²⁶⁴ Such manuals are one way to increase awareness in Japan about the growing problem of sexual harassment. Although some of the guidelines may seem like common sense, they are needed reminders for Japanese businessmen for whom touching, name calling, and sexual references are common.²⁶⁵

6.3. *Linkages: Conditioning Trade Privileges on Compliance with International Labor Standards on Sexual Harassment*

In 1993, Congress and President Clinton conditioned their approval of the North American Free Trade Agreement ("NAFTA")²⁶⁶ on the adoption of the North American Agreement on Labor Cooperation ("NAALC").²⁶⁷ The NAALC requires that NAFTA member countries comply with their domestic labor laws and maintain fair domestic tribunals available to adjudicate labor disputes.²⁶⁸ Nondiscrimination in employment is included among the eleven labor rights protected under the NAALC.²⁶⁹ Unlike an international statute that would mandate the uniform application of a specific sexual harassment law, the NAALC does not set forth minimum acceptable standards. Rather, member countries are required only to promote nondiscrimination in employment through their own laws "to the maximum extent possible."²⁷⁰

Labor rights activists and free trade advocates have criticized the NAALC.²⁷¹ Labor rights activists condemn the NAALC for its limited use of sanctions and for its failure to encourage im-

²⁶⁴ See *id.*

²⁶⁵ See *id.*

²⁶⁶ See North American Free Trade Agreement, Dec. 8-17, 1992, 32 I.L.M. 605 (1993) [hereinafter NAFTA].

²⁶⁷ See North American Agreement on Labor Cooperation, Sept. 9-14, 1993, 32 I.L.M. 1499 (1993) [hereinafter NAALC].

²⁶⁸ See *id.*; see also Sarah H. Cleveland, *Global Labor Rights and the Alien Tort Claims Act*, 76 TEX. L. REV. 1533, 1544-46 (1998) (reviewing HUMAN RIGHTS, LABOR RIGHTS, AND INTERNATIONAL TRADE (Lance A. Compa & Stephen F. Diamond eds., 1996) (highlighting the important features of NAALC)).

²⁶⁹ See NAALC, *supra* note 267, annex 1; see also Cleveland, *supra* note 268, at 1554-46 (highlighting the important features of the NAALC).

²⁷⁰ NAALC, *supra* note 267, art. 1.

²⁷¹ See Cleveland, *supra* note 268, at 1546 (noting the criticism of NAALC by labor and free trade activists).

provement of labor standards for member states.²⁷² The current linkage irritates free trade advocates, and they are fearful of linkages in future trade agreements.²⁷³ Despite the criticism from these two groups, many credit the NAALC with increasing awareness of labor problems and forcing member states to review their actions.²⁷⁴ Others see the NAALC as “a groundbreaking step toward regional collaboration in the development . . . of [international] labor rights.”²⁷⁵

Several corporations and governmental agencies oppose the paternalistic linkage of trade and labor rights. In fact, the notion of linking trade agreements and labor rights is highly criticized by non-Western countries, particularly Asian governments and employers.²⁷⁶ Asian criticism is related to the problems associated with the universality of international laws, such as those addressed throughout this comment. Nonetheless, linking trade agreements with the acceptance of initiatives to eliminate discrimination against women may prove effective in eradicating the injustices women face in the workplace. However, there is a fine line to draw. The linkage should not go so far as to require a country to adopt a specific statute mandating elimination of discrimination against women. Rather, like the NAALC, the linkage should increase awareness and require member countries to follow their own law, not a newly developed transnational law that is insensitive to societal and cultural norms. At the very least, conditioning free trade on the requirement that member countries follow their own law on discrimination will force member nations to think about labor standards and discrimination.²⁷⁷ Whether linkages in this context will work remains to be seen.

²⁷² See *id.*

²⁷³ See *id.*

²⁷⁴ See Lance A. Compa, *The First NAFTA Labor Cases: A New International Labor Rights Regime Takes Shape*, 3 U.S.-MEX. L.J. 159, 178 (1995) (discussing the NAALC's effectiveness in increasing awareness about important labor issues).

²⁷⁵ Cleveland, *supra* note 268, at 1546.

²⁷⁶ See Tadashi Hanami, *Globalization of Employment and Social Clauses*, JAPAN LAB. BULL., Feb. 1, 1997, at 4, 7-9 (discussing Asian opposition to the linking of trade and labor standards).

²⁷⁷ The linkage of international trade and labor standards is not a new issue. See *id.* at 7 (noting that, although not successful, the initiative to impose “fair labor standards” in trade agreements began as early as the 1930s).

6.4. *Businesses Focusing on the Problem of Sexual Harassment*

In Japan, insurance companies have started selling policies to Japanese companies to protect them against claims of sexual harassment.²⁷⁸ The availability of such insurance policies is likely to put Japanese corporations on notice that sexual harassment is a problem worth considering. Furthermore, only companies that agree to educate their employees about sexual harassment will be able to obtain the insurance policies.²⁷⁹

6.5. *Increased Presence of Japanese Women in Government Offices*

In order to effect substantial change of the treatment of women in the Japanese workplace, Japanese women must be more involved in shaping public policy surrounding women's issues and equality. Notori Haniwa, Director of the Office for Gender Equality, notes that "[t]he principal cause of the lag behind other developed countries is the low percentage of women's participation in the policy and decision-making process, especially in the public sector."²⁸⁰ Increasing the number of women members of government advisory panels²⁸¹ and Parliament²⁸² would raise awareness about sexual harassment and assist in developing workplace equality policies. The Japanese Government should increase its commitment to enacting legislation to improve the status quo for working women.

6.6. *Increased Presence and Acceptance of Women in the Japanese Workplace*

To eradicate sexual harassment and discrimination against women, the number of women employees in the Japanese workforce must continue to rise. The increased presence of

²⁷⁸ See, e.g., *AIU Insurance Co., A Japanese Unit of American International Group Inc.*, AM. CHAMBER OF COM. IN JAPAN J., Aug. 1, 1997 (reporting that AIU Insurance Co., a Japanese subsidiary of American International Group Inc., has begun to sell sexual harassment litigation insurance to Japanese companies).

²⁷⁹ See *id.*

²⁸⁰ Young, *supra* note 25, at 8.

²⁸¹ See *id.* (noting Natori Haniwa's proposal to raise the number of women in government advisory panels from 16.6% to 20% by the year 2000).

²⁸² See *id.* (reporting that women comprised only 7.6% of the Japanese Parliament).

women in the workplace will leave corporations with little choice but to develop policies to assist women with the problems they have traditionally faced at work. To achieve equality, social conditions in Japan must change and new laws must follow. Women need childcare facilities, changes in their household obligations, and awareness that household responsibilities are shared between men and women. Women must adapt to the changing workplace by exuding confidence, accepting promotions, and assuming responsibility.²⁸³

Overall, the Japanese culture must be infiltrated with information on gender equality, elimination of sexual harassment, and the general social worth of women. Rather than demand a unified approach to sexual harassment, the international community should work towards a pluralistic method of dealing with sexual harassment that takes into account a nation's culture, history, and societal norms.²⁸⁴ Although complete adoption of U.S. sexual harassment laws is impractical in a country such as Japan, the development of sexual harassment law in the United States influences the world's effort to eliminate sex discrimination.²⁸⁵ Some commentators even suggest that focusing on the United States' sexual harassment law will result in a "new, less ambivalent definition . . . exported around the world."²⁸⁶ It is important that the international community, particularly nations with their own methods of coping with sexual harassment, help educate Japanese society, as well as implementing their own laws against Japanese MNEs when allowed.

7. CONCLUSION

As corporations continue to expand into the international arena, the need for the globalization of business ethics grows rapidly. The rights of women in the workplace must be addressed

²⁸³ A female owner of a successful Japanese frozen food company reported that although younger women are somewhat more aggressive and confident in the workplace, many women continue to perpetuate the stereotype of the traditional Japanese woman. See *Budding Taste for Equality*, ASAHI SHIMBUN, Nov. 14, 1998, available in 1998 WL 22369447.

²⁸⁴ See Bernstein, *supra* note 16, at 1232 (suggesting that other nations learn from Europe and the United States to improve sexual harassment legislation).

²⁸⁵ See Earle & Madek, *supra* note 11, at 91 ("Legal developments in the United States regarding sexual harassment are a catalyst for change around the globe.").

²⁸⁶ *Id.*

by all nations, particularly those nations with a strong presence in the global economy. However, questions remain. If Japan wants to maintain its position in the global economy, the pervasive sexual harassment and discrimination of women in the workplace must be addressed and changed. How should that change come about? Are uniform sexual harassment laws the answer to this problem? Japan's culture is somewhat unique and distinct from that of many other industrialized nations. These rare cultural traditions and ingrained business practices make transnational application of sexual harassment laws nearly impossible. It would be inappropriate and ineffective to force a nation with a well-established culture to adopt a culturally-generic law that dispenses with culture and tradition.

In recent years, several international events have put Japan on notice that its anti-discrimination laws need revision. The United Nations Conference on the Elimination of Discrimination Against Women has called for improved anti-discrimination laws and innovative ways to improve the workplace for women.

To retain vitality in the global economy, Japan must not simply accept women in the workplace; it must encourage them to succeed. Although the international community must assist in the efforts of Japanese women to achieve equality in the employment world, the transnational application of sexual harassment law is not the way to realize this ideal. It is unlikely that Japanese corporations or Japanese society will accept international legislation written without consideration of Japanese cultural norms and practices.

Therefore, in order to achieve a gender-neutral working environment, Japan's change must come from within. Legislation must be drafted and enforced with a sensitivity toward Japanese culture and business practices. In addition, legislation must distinguish acceptable corporate practices from those that allow discrimination to persist in Japan. Ultimately, however, only domestic efforts will succeed at globalizing Japan's legislation and adopting policies prohibiting sex discrimination and sexual harassment in the Japanese workplace.

Sexual harassment is entrenched in Japanese business cultural and societal views of women in the workplace. In recognition of this reality, laws created to combat sexual harassment must respect Japanese culture and traditions. However, as the EEOL's shortcomings demonstrate, it is necessary to achieve a balance be-

tween laws that adequately challenge the status quo and laws that defer to cultural norms to such a degree that they fail to correct the problem. The EEOL is exceedingly deferential to traditional Japanese sexism. The EEOL does not challenge Japanese culture because it fails to implement change in a society beholden to tradition.

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