**Japan’s Same Surname Law for Married Couples Is in the Hands of the Diet**

Efforts to annul outdated marriage provisions through the courts have failed. Can the legislature overcome the deeply entrenched political gap hindering reform?

By [**Thisanka Siripala**](https://thediplomat.com/authors/thisanka-siripala/) July 08, 2021

Sharing a surname after marriage is a legal requirement in Japan. The latest appeal to overturn the Civil Code, which does not allow married couples to retain separate surnames, was thrown out by the Supreme Court last month. While the ruling mirrors the views of conservative lawmakers within the ruling Liberal Democratic Party (LDP), it triggered widespread public debate on [an issue that has stalled for decades](https://thediplomat.com/2020/12/japans-new-gender-equality-policy-takes-a-step-back/).

In their legal battle, the plaintiffs argued that the Civil Code and the Family Registration Law violates the principles of equality under the constitution. While public opinion generally supports being able to freely choose the same surname – which, in practice, has overwhelmingly meant the wife changing her name – or keeping separate surnames, on June 23 the Supreme Court once again ruled that the current law is constitutional.

There are 15 Supreme Court justices, all of whom were selected by the former Abe and current Suga administrations of the LDP. Only three female judges presided over the lawsuit, and only four judges in total criticized the same surname law as being unjustified “state intervention.” The four opposing judges cited the burden placed on women and career disruptions due to the current legal provisions and explained that the freedom to choose one’s surname will improve peoples’ welfare and human dignity.

While the law doesn’t stipulate which partner must change their surname to match the other, 96 percent of the time women make the switch. Under the Family Registration Law Japanese nationals who marry foreigners are exempt and are able choose either changing or retaining their surname.

The Supreme Court upheld the same ruling in 2015, but this time proponents were hopeful that the decision would be adapted in consideration of shifting public opinion. In an age where divorce and remarriage are commonplace, proponents for reforming the law say they feel betrayed by the judiciary.

On the other hand, the Supreme Court has emphasized since 2015 that the court is not the place to settle political conflicts; their responsibility is to examine specific cases and remedy individual issues. Last month, the court reiterated that the issue should be debated in the Diet, rather than the judiciary, to deepen public understanding. However, some legal experts argue that leaving the matter to the legislature is the equivalent of the court abandoning its responsibility.

Over the years, conservative factions within Japan’s ruling LDP, which is dominated by men, have been reluctant to introduce a new surname system over fears that separate surnames would weaken family ties and negatively affect children.

A bill to amend the law was drafted in 1996 but was not submitted to the Diet due to staunch opposition from the LDP. It’s now been 25 years since the debate was first introduced, and a new generation of married couples are looking to pressure right-wing conservatives who believe that sharing a surname forms the backbone of Japanese society.

The LDP parliamentary caucus on the “Realization of a Separate Surname System” consists of 105 members and has met three times. An interim summary released on June 10 revealed the caucus’ aim to “maintain the principles” of the Family Registration Law. A decision on the surname issue has been postponed until the next Diet session in the autumn on account of the deep-rooted conflict between factions in favor of a new system and those against it.

Chief Cabinet Secretary Kato Katsunobu said the government would not comment on the Supreme Court’s ruling but added that the government will consider the issue in line with current policies promoting gender equality and will “closely monitor the opinions from all segments of society.”

Japan’s Civil Code dates back to 1898, during the Meiji imperial era. The imperial system was formally abolished seven decades ago, but the law remains intact. Japan is the only industrialized country that requires married couples to share the same surname by law. Thailand, South Korea, China, and many other neighboring countries allow separate surnames.

Between 2003 and 2009 the United Nations Committee on the Elimination of Discrimination against Women called the law discriminatory and has recommended the introduction of a preferential surname system.

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