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Marilena-Oana NEDELEA[1]

Abstract

The fascinating and dynamic Japanese culture and civilization is based on its development of ethical values, principles and rules of unique, special and highly diversified law. The Japanese legal system brings together a number of special ideas in the context of the evolution and variety of social and moral norms.

Keywords:

Japanese Law; Taika Constitution; Japanese legislation.

1.INTRODUCTION

"Some peoples, or more precisely civilizations, mark with their undeniable personality the epoch of glory in history. (...) In the multivalent orchestration of civilizations in the last two millennia, the Japanese occupy a special place. The Japanese have succeeded in asserting themselves as a special, unmistakable presence, worth taking into consideration and analyse" [1].

In the opinion of Professor Marius Ioan Mihut, the history and evolution of the Japanese civilization was based on the cult of the Emperor under the name Tenno - the heavenly sovereign or Mikado - an honorary gate. Thus the first fundamental law - the one in 604 - stipulated that "the sovereign is the master of the people and of the whole country" and that "the master is heaven, the vassal is the earth", conferring the supreme power to the emperor [2].

In the vision of Danielle Elisseeff debated in the thesis *Japanese Civilization*, the author considers that the Emperor is the descendant of the gods, the nephew of the Amateratsu goddess, he "represents the legendary extrapolation of the actual perennial of an ascendance that really comes from the Japanese proto-history" or "the roots in an infinity beyond reason and which only the sun, in its seeming eternity, could figure it" [3].

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2. SOURCES OF THE JAPANESE LAW SYSTEM

In order to understand how the law was formed and evolved in the Japanese society, we must understand that at the base of the Japanese society there were three basic pillars: the cult of the Emperor, the cult of labour, and the cult of harmony and family.

Starting with the 3rd century BC is the first Japanese state - *Yamato*. From the sixth century, the Buddhism was introduced as an official religion in the state. It is worth mentioning in this context the Chinese influence on the social life, an idea supported by the implementation of the Taika Reforms, as well as the shaping of a stable and functional legal system.

In the first *Constitution* of 604, it was stated that "all ministers and officials must start early and interrupt it late" [4]. More in the *Bushido Code* (The Warrior's Path - Samurai Law), the idea of implementing things done thoroughly, correctly, and respecting the norms of law is outlined [5].

The importance of the Samurai class was strengthened with the expansionist wars waged against the Ainu people living on Honshu Island. The Samurai House has had a great influence on the Japanese society, not only through the role of leadership and law-making, but also through its cultural and educational activities [6] . Among the basic principles of samurai we mention: loyalty, debt and value [6].

In the Japanese prefeudal era, the custom laws were different from one region to another. It is the custom that the head of the family judges and sanctions their own members.

In Kamakura, two judicial bodies were involved in criminal proceedings, namely the civil proceedings, courts operating on the premises of the shogun civil government.

Koken Empress, in the eighth century, required that each house to be the copy of the work of the *Branch of Piety*, which was to be known by persons who studied law, literature, or sciences.

In the nineteenth century, Buddhist monks made two volumes of practical morality that formed the basis for shaping and modelling the norms of law: *Teaching by words of truth - Jitu-go kyo* and *Teachings for Young People - Dojikyo*. One of the important phrases on which the two writings are based has the following content: "The defect found in a jade stone can be removed, but the evil done by a word is irreparable" [1].

In 645, the *Taika Constitution* was promulgated, in translation the Great Reformation. The text of this law regulated the appointment of the

State Council. The Taika Reform stipulated the abolition of local rules enjoyed by provincial nobility.

The provincial nobility had to be recruited by the rural governors, who had the attributions of the leadership of the rural districts. Based on the provisions of the *Taika Constitution*, registers were to be set up to keep records of the population, how to divide the land, but also to keep the accounts as accurate as possible. A number of measures have been taken mainly to curb corruption among civil servants.

At the same time, it has to be mentioned that codes of laws with a strong Chinese influence were made, emphasizing the Emperor's authority and a stronger centralization of power. These laws are known as *ryo* – in translation instructions for officials. It was hoped that a group of 400 officials would lead a state with a population of 5 million [7].

A reform of the legal system was started during the reign of Emperor Tenchi Tenno, but have not kept records in this respect.

In the year 702, during the reign of Emperor Mommu, the *Taiho Code* or the *Great Treasure* was promulgated. Among the lawyers who worked on this code, we can mention *Fujiwara no Fobita* and *Awata no Mobito*.

Unfortunately, the provisions of this code have not been preserved, but only a series of comments dating from 833 - *Ryo no Gige* and another 920 commentary called *Ryo no Shuge*.

The *Taiho Code* was revised and began to be applied since 757 under the name of the Yoro Code. Under the new provisions, *Dajo-Kan* - the Grand Council of State, is in charge of the state. It was coordinated by a chancellor of the empire supported by the work of two ministers.

With approximately similar attributions we can mention *Jingi-Kam* – in translation the Department of Religion.

There were eight ministries:

- ✓ *Nakatsukasa* - Ministry of internal affairs - within this Structure the imperial decrees were prepared, petitions were solved, and the state chronicles were registered.
- ✓ *Shikibusho* - Ministry of Ceremonies;
- ✓ *Jibusho* - Ministry of Civil Trends;
- ✓ *Minshubo* - Ministry of Popular Trends;
- ✓ *Hyobusho* - Ministry of War;
- ✓ *Gyobusho* - Ministry of Justice;
- ✓ *Okurash*o - Ministry of National Thesaurus;

- ✓ *Kunaisho* - Imperial House.

During the period between 724 and 756 of the reign of Emperor Shomu, the capital punishment was reintroduced and later reintroduced during the time of Emperor Konin (770-781) due to the great extent of the criminal offenses.

Chinese codes of the 7th century have influenced the evolution of the Japanese rule system. In Japan the leadership of the main state institutions belonged to the heads of clans. The idea to take as many rules as Chinese, Japanese laws similar categories classified as Chinese Sui and Tang dynasties. In this regard, we can list the main codes of law:

- ✓ *Ritu* - Criminal Code;
- ✓ *Ryo* - Administrative Code;
- ✓ *Kuaku* and *shiki* - Regulations for the application of the abovementioned codes (Simu, 1984).

In the fourteenth century, the filial devotion - *inkyo* - became a habit of the fact that at the age of 40, the person working in various institutions would withdraw and leave the place of the young.

The Japanese society was divided into three social classes: *kazoku* - nobility; *shzohu* - aristocracy and *heimin* - the people. Along with this classification, the Japanese society has evolved and taken into account the profession hierarchy. Imperial edicts were awarded nobility titles: *ko, haku, dan*. At the top of the pyramid were samurai, followed by peasants, merchants, but also a category considered inferior *eta* - dealing with leather processing or cleaning.

At the end of the 12th century there was a strong conflict between the Minamoto and Tairo clans, settled with the victory of the first, which determined the imposition of a Yorimoto as a shogun. After that Japan became a two-headed country, so the imperial institution became a purely formal institution, the power being in the hands of the great general [8].

During Kamakura (1185-1333), the court officials administered the provinces under their jurisdiction based on local customs and laws, although there were codes of laws introduced centrally [7] .

After the feudal state's crystallization, legislation will evolve over three important directions:

- ✓ 1192-1477 the stage of capitulation;
- ✓ 1477-1615 the stage of the laws by which the noble daimyo administers its own feuds;

✓ After the restoration of the shogun authority - the stage marking the entry into force of the code for the use of the military nobility and for organizing the work of the imperial court (Drimba, 1984).

"The Japanese Knights' Code claims to faithfully explain, the Japanese soul, gathering in some rigid formulas an almost indescribable complexity" [1] .

Inazo Nitobe invents the term bushido which in translation means the knight's way. The bushido knights' code has an interesting evolution outlined in three important stages:

1147-1199 - The Yoritomo Shogunate period refers to the warrior class and very strict conduct based on principles such as discipline, devotion, responsibility.

1603 - The stage of the Tokugawa Shogunate in which bushido will experience a reformation and powerful influence of Confucianism. In 1615, Ieuasu initiated a set of laws to ensure control over the military, as well as the way the court was organized and functioned. Among the statements we can list:

✓ Criminals will be expelled;

✓ *Daiyo* marriages must be approved by Shogun;

✓ No castle is built or repairs will be done without the shogun's approval.

1868 - Corresponding to the beginning of the Meiji era, a stage where we witness the decline of the power of the shoguns and the restoration of the imperial regime. In this respect, two editions will be given:

✓ In 1882, the edict intended for the navy and the military, and containing the five moral principles that each samurai must follow;

✓ Year 1890 marks the moment of proclamation of the imperial edict on the regulation of norms for education [1] .

Good administrative-territorial organization must also be mentioned. Thus the central authority called the provincial governors, who were the emperor's representatives in the territory. The empire was initially structured in four inner or central provinces, and then their number reached 5. The other provinces were considered external and were organized in districts and communes. The dictatorships were led by a *Gunshi* - a governor of a lower class, and the communes were run by a boss - a function equivalent to the mayor's choice among the inhabitants.

Some dysfunctions of the Japanese administrative system occurred during the Heian period, a period corresponding to the relocation of the

capital from Nara to Nagaoka, then to Heian-Kya - the capital of peace and calm - today's Kyoto.

The frequent armed conflicts, the huge and unjustified expenses, lead to the decline of the power of the State Council, and some of the ministry's powers will be limited, even some titles becoming honorary.

The Kuraudo-dokoro archives office becomes an increasingly powerful institution, becoming the institution with the main task of drafting imperial decrees, as well as drawing up the main rules of conduct to be observed in the palace.

In the year 817, the Kebiishicho Police Commission will have powers such as: the right to arrest, to interrogate, and even to judge those who were guilty of certain crimes or delicate acts. In the year 800, the Court of Accounts - *Kageyushi* was set up with the main purpose of verifying the accounts of provincial governors.

During the Tokugawa Shogunate, two systems of laws were established and used: a system of laws based on the principle of decentralization; in this sense, the administrative power had the upper-down direction from the shogun to the daimyo; and a second system of private relations laws regulates private relations and Japanese transactions encountered at all levels of society.

A quarter of the country was governed directly by the Shogunate, and the rest of the territory was structured in 250 domains led by local *daimyo*.

Until 1721 in Japan, it was customary for the family to account for the deeds of its members; moreover, they consisted of groups of five families that cared for each other.

The return to power of Meiji has led to a number of changes in Japanese society, so that after 1868 the legislative modernization took place. In 1880, on the basis of the French model, a criminal code and a criminal procedure code were drawn up. In 1890 we mention the *Code of Civil Procedure,* in 1899 the *Code of Commerce*, and in the same year, on the German model, the *Civil Code* will enter into force.

In April 1868, the document titled *The Oath Cart* was given to five articles, as follows:

- ✓ The state problems should be discussed in public;
- ✓ Participation of representatives of all social classes in the administration of the country;
- ✓ Freedom of people to choose their profession;

✓ Abandonment of a series of habits that limit the development of the individual;

✓ Reception of new and new external information meant to contribute to the development of administrative structures.

In the Yamoto era, it was the foundation of the *Uji* structures, which were based on communities with the same descendants and common ancestors. The leader of the group was called *uji no hami*. On the other hand, can also be mentioned groups that were based on a similar occupation and were called *Be or Tomo*. Among the clans were ministers - *Oomi*, who were in touch with the imperial family.

At the local leadership are mentioned *kuni no miystsuko* - heads with limited powers (Simu, 1984).

Rules on the organization of family law are extremely interesting in Japanese culture. Thus, at birth, the child was considered as one year old. Noon children started school at the age of seven, studied Buddhist sutras, Japanese and Chinese writing, calligraphy, and label.

The age of majority was set at 13 years, except for samurai whose age was fixed at 15 years. Marriage was set by parents, there was probation marriage, and polygamy was practiced. The ritual of the marriage was simple and it consisted of exchanging between three wedges of sake. Marriage was considered to be congenial after the birth of the first child [9].

The family was built on three kinship groups, fulfilling social and legal prerogatives, differentiated from each other. The most important group was called *shinuri* - and brought together people in the blood community up to the first degrees of paternity. Grouping *enuri* - was the second group, with a more distant relative. Relatives by alliance entered the category called *enja* and had no legal role.

Property and name were inherited by the eldest son. The head of the family had a number of duties from which we can mention: manage family goods, decide on marriage, and was also the representative of the family in the local community [1].

The conclusion of the marriage was based on a contract, so that a new family was not born, but a family transferred one member to another. The status of the woman was constituted as a triple obedience: towards the father, as a wife and an elderly woman to her sons. The work *The Great Teaching of Women - Onnadaigaku*, was the only source of education for women. The above-mentioned book encompassed a series of advice according to Confucian morality.

3. CONCLUSION

The institution of adoption was known and practiced, so the adopted child was called - *irimuko* and became the heir.

Making an incursion among the most important sources of Japanese law, there is a strong intertwining of ethical, moral, religious and legal values.

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