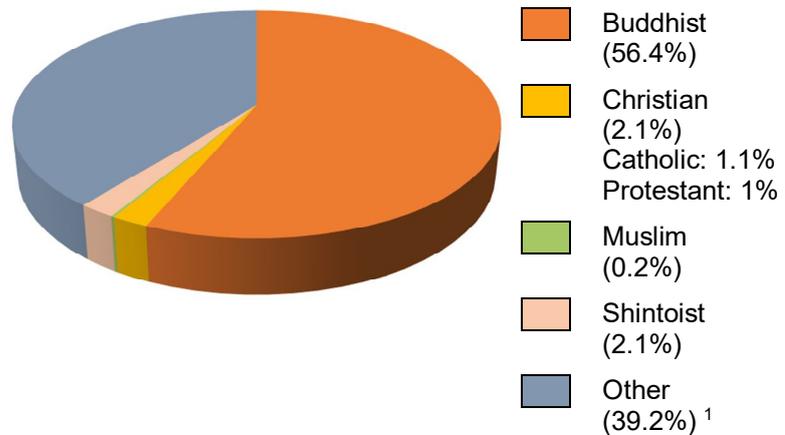


# JAPAN



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<b>Area:</b> 378 000 km <sup>2</sup>	<b>Population:</b> 126.5 million	<b>Political system:</b> Monarchy	<b>Major Language(s):</b> Aynu, Itak, Ryukyuan
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## Legal framework on Freedom of Religion and actual application

A very large number of Japanese describe themselves as belonging both to Shintoism and to Buddhism, or indeed to several religions at the same time. According to the Yearbook of Religions published by the Ministry for Education Science and Culture, 100 million Japanese declare themselves Buddhists, while 95 million claim to be Shintoists.

A constitutional monarchy, Japan has a democratically elected government. There is broad freedom of religious practice and the government protects the right to practise one's religious faith, maintaining strict neutrality in this regard. This respect for religious freedom is rooted in the Constitution and the laws of the country.

The Japanese Constitution, which was promulgated on 3<sup>rd</sup> November 1946 and formally introduced on 3<sup>rd</sup> May 1947, sets out the legal principles and rules in regard to religious freedom, including notably the separation of religion and the state in articles 20 and 89:

Art. 20: "Freedom of religion is guaranteed to all. No religious organisation shall receive any privileges from the State, nor exercise any political authority. No person shall be compelled to take part in any religious act, celebration, rite or practice. The State and its organs shall refrain from religious education or any other religious activity."

Art. 89: "No public money or other property shall be expended or appropriated for the use, benefit or maintenance of any religious institution or association, or for any charitable, educational or benevolent enterprises not under the control of public authority."<sup>2</sup>

These provisions guarantee not just the subjective aspects of religious freedom – such as the freedom to believe or not believe, to convert, to worship, to organise and propagate one's faith within the religious sphere – but also the objective and institutional aspect, ie the *laïcité* of the state on a model similar to the one which exists in France, maintaining strict separation between religion and the state.

Nevertheless, these provisions have not always been present in the history or constitutional texts of Japan. The Constitution of 1947 was deliberately written in radical opposition to the former Meiji constitutional charter with the aim of creating a model liberal and pacific democracy in a country crushed by military defeat and atomic bombs. In postulating the natural and inviolable rights of the

human person, the authors of the Constitution made religious freedom the basis of each Japanese citizen's spiritual independence. In doing so they were particularly aiming to eliminate the ancient habit of blind obedience of subjects to the authority of the Tennô, the Emperor, which was closely bound up with the state-imposed Shintoism (*jinja*).

So it is worth asking whether the “grafting on” of such universal religious freedom on to the rootstock of Japanese tradition actually taken?

Specialists in Japanese law<sup>3</sup> suggest the constitutional jurisprudence of the 1970s, 1980s and 1990s has indeed safeguarded religious freedom and the principle of the secular state, in particular because of the continuing efforts of various civil movements. There have been numerous appeals to the courts and to public opinion on the grounds of unconstitutionality and it is for this reason, for example, that a state financial subsidy for the Shintoist temple of Yasukuni<sup>4</sup> was rendered legally, and practically, impossible. Following the judgement by the Supreme Court in 1997 it has become extremely difficult for the Prime Minister or one of his ministers to attend any official act of worship.

### Incidents

At a less directly political level it can be seen that religious organisations keep watch to ensure state institutions respect religious freedom. The incident below dates back to May 2012, but to the knowledge of this author, no other incident of this type has occurred since that date. On 27<sup>th</sup> May 2012, on Pentecost Sunday, a Catholic Mass was being celebrated in the parish of Kaizuka in the town of Kawasaki, in Yokohama diocese. In this diocese Catholics of foreign origin account for two thirds of the Catholic community. As in other Catholic churches in Japan, Mass is also celebrated in English to meet the pastoral needs of the non-Japanese parishioners. In Kaizuka the English-language Sunday Mass is celebrated at 1:30 pm. On 27<sup>th</sup> May six officers from a nearby police station invaded the parish grounds during Mass without any prior notice and without producing a legal warrant. After having checked the papers of several people on the premises, they arrested a Filipino man. Since he had no passport on him, the police arrested him for questioning on suspicion of exceeding the legal duration of his stay in Japan.

During the following weeks, the president of the Catholic Bishops' conference in Japan intervened with the president of the *Kokka Koan linkai*, the government body that supervises the national police and whose role is to assure their independence in regard to political pressure and also assure their respect for democratic principles. In his letter, signed on behalf of the Japanese bishops, Archbishop Ikenaga, who was at that time the Archbishop of Osaka, called on the police not to disturb the activities of the Church and to refrain from entering her properties without due legal warrant. The Archbishop also called on the authorities not to pursue foreign nationals into the places of worship, nor to carry out identity checks on Church property or its immediate surroundings.<sup>5</sup>

Shortly afterwards, the police submitted their apologies, characterising the action of their officers in Kawasaki as “unjustifiable” and announcing that all the police stations in the country would be reminded of the laws relating to “the respect of fundamental rights”.<sup>6</sup> For the Catholic episcopate the matter was closed, but it was important for the state to recognise its mistakes. The Catholic Church in Japan has two distinct aspects. After taking into account the 450,000 or so Japanese Catholics, the – quite recent and relatively limited – opening of the country to immigration has resulted in many Catholics of foreign origin, from the Philippines, Latin America and other countries. Today these foreign Catholics are approximately equal in number, if not slightly more than the native Japanese Catholics, and indeed, in the diocese of Yokohama the local bishop, Mgr Umemura, has adopted as his episcopal motto the words *Communio communionum* (“the communion of all the communities”) as a way of expressing his desire to see the Catholic community, both Japanese and non-Japanese, as forming one body in one and the same Church.

However, while the Japanese appear to be attached to the freedoms they enjoy, there are some political developments of potential concern. It has been quite some time since the Japanese

economy seemed to dominate the world. For two decades now the country seems to have been unable to emerge from economic stagnation, characterised by deflation and an aging population. In 2015 the Japanese population fell again for the fifth consecutive year – at 126.5 million it is now back to the same level as in the year 2000, and it is increasingly ageing. Those aged 65 and older now outnumber those aged 14 and under.

Faced with this relative decline, the nationalist right wing in Japan is again pursuing a revision of the 1947 Constitution, and in particular its Article 9, which makes Japan the only nation in the world to have formally renounced war<sup>7</sup> – and more broadly to turn over a new page in regard to what they describe as “the postwar society”, in order to restore a sense of national pride in the Japanese people.

### Prospects for Religious Freedom

For the Catholic Church in Japan, as for a number of political observers, the revision of Article 9 of the constitution is more than merely a matter of redefining the place of Japan in the international community.<sup>8</sup> As was emphasised by a source close to Prime Minister Abe Shinzō, what is really at stake is the need to install a new “regime” for Japan today. Abe Shinzō – who was returned to power in December 2012 and has since then held a majority in the Diet, the Japanese parliament – said the constitution of 1947 is “an act of contrition by the vanquished in the face of the victor”, and that this founding text now needs to be “shaped by our own hands”. He makes no secret that he is seeking a “departure from the postwar regime”.<sup>9</sup>

Among Japan’s neighbours, where the wounds linked to the period of Japanese imperialist expansionism and the Second World War have not yet healed, these developments are being followed with close attention. In Hong Kong, at the Asiatic Centre for the Progress of Peoples, they point out with some concern that the reforms of Abe Shinzō have an intended scope that goes well beyond a simple cosmetic makeover of the constitution. “The [Liberal Democratic Party] LDP is defending the idea that the social developments that have come in from the West, and notably the spread of individualism, have weakened Japanese culture and tradition, which are centred not around the individual but around the group”, states a document published by the centre. In the plans of the LDP to reshape the constitution, one can read that “the citizens should be aware that the duties and obligations that accompany their rights and freedoms can never be contrary to public order and public interest.” For the analysts at the Asiatic Centre for the Progress of Peoples, there is reason for concern here: “Summing up, the basic freedoms of expression, of assembly and association could be suspended or limited if they threaten what the government perceives as public order or the public interest. And this is because these freedoms will no longer be recognised as natural, inalienable and fundamental to the rights of man, but will henceforth be no more than rights granted or conceded by the government.”<sup>10</sup> For these observers, while the risk is small of seeing a revival of the state Shintoism that ruled during the 1930s and right up to 1945, the calling in to question of such basic freedoms will affect freedom of religion. In this way Japan would be placing itself in direct contradiction to the definition of human rights as defined in the UN Charter, which has been signed and ratified by Tokyo.

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<sup>1</sup> Although Japan has chosen to open up to a limited degree to immigration, there is nonetheless a considerable foreign population living permanently on Japanese soil. Catholics are numerous among them, mainly originating from the Philippines or the countries of Latin America such as Peru and Brazil. Today they represent a number of the Catholic faithful almost as large as that of the Japanese Catholics. See *Eglises d’Asie : “La crise économique amène le gouvernement à inciter les travailleurs immigrés brésiliens et péruviens à quitter le pays”*, 16<sup>th</sup> April 2009 (<http://eglasiemepasie.org/asi-du-nord-est/japon/2009-04-16-la-crise-economique-amene-le-gouvernement-a/>)

<sup>2</sup> The Japanese Constitution: [http://japan.kantei.go.jp/constitution\\_and\\_government\\_of\\_japan/constitution\\_e.html](http://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html)

<sup>3</sup> *Du droit interne au droit international - Le facteur religieux et l’exigence des droits de l’homme*, de Raymond Goy (1998, Publications de l’Université de Rouen)

<sup>4</sup> The Yasukuni Shinto shrine in Tokyo (*yasukuni jinja* or ‘temple of the nation at peace’) is the shrine honouring those who died for the nation; however it includes among them the names of war criminals judged and executed at the end of the Second World War. Built in 1869 to pay homage to those Japanese “who had given their lives in the service of the Japanese Emperor”, it preserves the memory of more than 2 million Japanese soldiers who died between 1868 and

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1951. Viewed by many as one of the symbols of Japan's militaristic past and the Nationalists, it is notable for the controversy it has aroused in the region, notably in South Korea and China, every time important Japanese political figures go to pay their respects there. The shrine also houses a museum, the Yushukan, which displays historical items and explanatory plaques retracing Japan's military history. Many are critical of its museographical approach which is seen as being nationalistic and tendentiously revisionist.

<sup>5</sup> *Eglises d'Asie* : "Les évêques catholiques demandent que la police ne procède pas à des contrôles d'identité des étrangers sur les lieux de culte ", 5<sup>th</sup> July 2012 (<http://eglasie.mepasie.org/asie-du-nord-est/japon/2012-07-05-les-veques-catholiques-demandent-que-la-police-ne-procede-pas-a-des-controles-d2019identite-des-etrangers-sur-les-lieux-de-culte>)

<sup>6</sup> *Eglises d'Asie* : " Interventions dans les lieux de culte : la police fait amende honorable", 19<sup>th</sup> July 2012 (<http://eglasie.mepasie.org/asie-du-nord-est/japon/2012-07-19-interventions-dans-les-lieux-de-culte-la-police-fait-amende-honorable>)

<sup>7</sup> Article 9 of the Japanese Constitution: "Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.

"In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognised."

<sup>8</sup> Catholic Bishops' Conference of Japan: "*70 Years after the War Blessed are the peacemakers – Now especially, peace must not depend upon weapons*", 25<sup>th</sup> February 2015 (<http://www.cbcj.catholic.jp/eng/edoc/150225.htm>)

<sup>9</sup> *The Diplomat* : "Shinzo Abe's Nationalist Strategy - With his overt nationalism and his historical revisionism, Shinzo Abe has a plan for Japan ", 13<sup>th</sup> February 2014 (<http://thediplomat.com/2014/02/shinzo-abes-nationalist-strategy/>)

<sup>10</sup> *Eglises d'Asie* : "L'épiscopat catholique met en garde contre une éventuelle révision de la Constitution du pays ", 21<sup>st</sup> August 2013 (<http://eglasie.mepasie.org/asie-du-nord-est/japon/2013-08-21-l2019episcopat-catholique-met-en-garde-contre-une-eventuelle-revision-de-la-constitution-du-pays>)