State Practice of Asian Countries in International Law

Japan

*Kanami Ishibashi**

HUMAN RIGHTS – CIVIL CODE REFORM – RECOMMENDATIONS BY THE UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW) – REVISION OF THE CIVIL CODE TO LOWER THE AGE OF MAJORITY FROM 20 TO 18

On June 13, 2018, the revised Civil Code was enacted to lower the age of majority from 20 to 18. Currently, Article 4 of the Civil Code provided that the age of majority is reached when a person has reached the age of 20. With this change in the age of majority, the government explained the significance of creating an environment in which young people aged 18 and 19 years old can make their own life choices, as well as encouraging their active participation in society and making it more dynamic. The Civil Code defines the age of majority as the age at which a person is able to enter into a contract alone and the age at which a person is no longer subject to parental authority. The age of majority has been set at 20 years since the Civil Code was enacted in 1896 (Meiji 29). It was the first time in 140 years since the proclamation of the Grand Council of State in 1876 that the age of majority was reviewed, and it is scheduled to take effect in April 2022. One of the important changes is that the marriage age of women will be raised from 16 to 18 old years (Article 731 of the Civil Code, “Age for marriage”), and the marriage age of men and women will be unified at 18 for the first time in Japan.

At the beginning of the Meiji period, Japan is said to have constituted its Civil Code order on the premise that the physical and mental maturity of women is earlier than men. There was also the issue of the economic independence of women as it was believed that women achieve economic stability only after they get marriage and the issue of the inadequacy of women's education as it was generally believed that women did not need higher education. In that historical context, the age for marriage for men and women was set differently.

* Associate Professor, Tokyo University of Foreign Studies.

The Committee on the Elimination of Discrimination against Women (CEDAW) had pointed out that women and men were treated unequally and recommend the Japanese government to respond as follows:

The Committee reiterates its previous recommendation (CEDAW/C/JPN/CO/6, para. 22) and calls upon the State party to urgently adopt a comprehensive definition of discrimination against women in national legislation in line with article 1 of the Convention, with a view to ensuring that women are protected against both direct and indirect discrimination in all spheres of life.

Discriminatory laws and lack of legal protection

12. The Committee regrets that its previous recommendations regarding existing discriminatory provisions have not been addressed. The Committee is particularly concerned:

- (a) That the Civil Code retains discriminatory provisions since it sets different minimum ages of marriage for women and men at 16 and 18 years of age, respectively;
- (b) That the Civil Code continues to prohibit only women from remarrying within a specified period of time after divorce, notwithstanding the decision of the Supreme Court to shorten the period from 6 months to 100 days;
- (c) That, on 16 December 2015, the Supreme Court upheld the constitutionality of article 750 of the Civil Code requiring married couples to use the same surname, which in practice often compels women to adopt their husbands' surnames;
- (d) That, despite the abolition in December 2013 of the provision that discriminated against children born out of wedlock in inheritance matters, various discriminatory provisions, including the provision in the Family Register Act concerning the discriminatory description during birth notification, have been retained;
- (e) That there is no comprehensive anti-discrimination law that covers intersectional discrimination against women belonging to various minority groups who are frequently subjected to harassment, stigmatization, and violence.

13. The Committee reiterates its previous recommendations (CEDAW/C/JPN/CO/5 and CEDAW/C/JPN/CO/6) and urges the State party to undertake the following without delay:

- (a) Amend the Civil Code in order to raise the legal minimum age of marriage for women to 18 years of age in order for it to be equal to that of men; revise legislation regarding the choice of surnames for

married couples in order to enable women to retain their maiden surnames; and abolish any waiting period for women to remarry upon divorce;

- (b) Abolish all discriminatory provisions regarding the status of children born out of wedlock and ensure that the law protects them and their mothers from stigma and discrimination in society;
- (c) Enact comprehensive anti-discrimination legislation that prohibits multiple/intersectional forms of discrimination against women belonging to various minority groups, and protect them from harassment and violence, in line with general recommendation No. 28 (2010) on the core obligations of States parties under article 2.

Responding to paragraph 12(1) above, Japan already amended its laws to shorten the period of prohibition of women from remarriage, and this amendment can also be positioned as a follow-up to one of the Committee's concerns that remained unaddressed, namely paragraph 12(a) and 13(a). The age limit for smoking, drinking and public competitions (horse racing, bicycle races, auto racing, motorboat racing) will be maintained at 20 years old. These are supposed to maintain the conventional age from the viewpoint of concerns about health and measures against gambling addiction.

HUMAN RIGHTS – CASES OF IMPLEMENTING THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

On March 15, 2018, the Supreme Court ruled that the failure to comply with the order under the Act for Implementation of the Convention on the Civil Aspects of International Child Abduction that the return of children, established in a lower court case as final was “unlawful detention.” In this case, a Japanese couple living in the U.S. had a deteriorating marital relationship, and the wife, in January 2016, returned to Japan with her child without the consent of the husband.

In July 2016, the husband filed a case based on the Act for Implementation of the Convention on the Civil Aspects of International Child Abduction. He filed a petition with the Tokyo Family Court under Article 26 of the Act for Implementation of the Hague Convention Implementation to have the child returned to the United States. Article 26 provides that:

A person whose rights of custody with respect to a child are breached due to removal to or retention in Japan may file a petition against the person who has the care of the child with a family court to seek an order

to return the child to the State of habitual residence pursuant to the provisions of this Act.

The court issued a decision in September 2016 ordering the return of the child to the United States, and this decision became final. Based on the above order, the husband filed a petition for execution by substitute of return of a child with the Tokyo Family Court (Article 137 of the Act for Implementation of the Hague Convention) and implementation of the child's return was decided upon (Articles 134(1) and 138 of the Act for Implementation of the Hague Convention). The court execution officer attempted to persuade the wife to release the child at her residence in May 2017, but she refused to open the front door, so the court execution officer entered through an upstairs window. However, the wife fiercely resisted the child's release by placing herself and her child under the same futon and holding him close to her. The child also refused, stating that he wanted to stay in Japan and did not want to go to the United States. Consequently, the court execution officer was not able to release him. The implementation was terminated without the child's release. The husband then requested that the unlawful detention should be resolved under the Act on Protection of Personal Liberty (the Habeas Corpus Act).

In November 2017, the Kanazawa Branch of the Nagoya High Court refused to allow the return of the child to the husband because handing the child over to the husband was against the child's will. However, the Supreme Court ruled that

[t]he detainee(child) was placed in a situation where it was difficult for him to obtain sufficient multifaceted and objective information necessary to make a decision as to whether or not to remain with the respondent (wife), including information regarding the return order, the significance of the return order and the execution by substitute of return of a child based thereon, and his life after being returned to the United States in accordance with the return order ... In making that decision, the respondent (wife) exerted undue psychological influence on the detainee (child).

The Supreme Court further held that

[t]here are special circumstances in which the detainee cannot be said to have remained under the respondent's control, based on his own free will ... The custody of the respondent for detainees should be considered to be a restraint within the meaning of Act on Protection of Personal Liberty (the Habeas Corpus Act) and its regulations.