

**Matters of Concern Regarding the Interim Draft by the Family Law Subcommittee of the Legislative Council of the Ministry of Justice**

The system being considered for the proposed the interim draft by the Family Law Subcommittee of the Legislative Council of the Ministry of Justice (Legislative Council of the Ministry of Justice, 13th meeting materials 12 and 13 (Note 1)) contains the following key issues.

- (1) Introduction of superficial joint legal custody system (creation of elective joint legal custody on the basis of agreement by both parents) (Material 13, page 23)
- (2) Prohibition of joint-physical custody after divorce (exclusion of physical custody right from elements of legal custody and creation of post-divorce sole physical custody right system to replace the post-divorce sole legal custody system after divorce) (Material 13, page 23)
- (3) Institutionalizing the current court operation which (i) designates the custodian, or those who have physical custody rights, based on the record of child care; and (ii) deprives the parent who has been deprived of physical custody rights of the legal custody (institutionalizing the “continuity principle”) (Material 12, page 12)
- (4) Legitimizing abduction of natural child (exclusion of the right of determination of residence from elements of legal custody) (Material 13, page 27)
- (5) Legitimizing restriction and/or elimination of parent and child relationship by a third party (creation of “child’s agent” system) (Material 13, page 9)
- (6) Creation of “right to claim support for minor child” for compulsory collection of child support from a parent deprived of legal custody and/or physical custody rights (Material 12, page 2)
- (7) Reinstatement of sole legal custody system during marriage (institutionalizing the ability of one parent to secure physical custody rights, which is the most crucial element of legal custody, alone while being married) (Material 13, page 27)
- (8) Lack of remedial measures for parent and child whose relationship is currently eliminated

If the system is realized, following specific changes in the society can be assumed.

Previously, it has been able for one parent to be designated as the custodian by abducting a child during marriage (continuity principle) and deprive the other parent of legal custody after divorce (Note 2).

In other words, the parent who has had the child physically taken away through abduction of a child, can in fact be legally treated by the public authorities such as the courts as being deprived of legal custody and/or physical custody rights at the same time even if such parent possessed legal custody and/or physical custody rights. Therefore, the parent who was forced to live separately from the child became separated for life from the child with the abduction of the child.

Legislation of the proposal will institutionalize this reality.

In addition, although the existing system deprived one parent of the legal custody rights with the abduction of the child by the other parent during marriage, implementation of the proposed system will deprive the legal custody of one parent with the application for physical custody designation by the other parent during marriage.

Subsequent to the institutionalization, physical custody right will include the right of determination of residence, and if one of the parents of the child is designated by the court as the custodian during marriage, blatant abduction of the child by the custodian parent in front of the other parent who is deprived of the right of determination of residence will be legitimate.

In addition, the relationship between the child and separately residing parent is intentionally limited or eliminated by access support agencies in reality. With the creation of the “child’s agent” system which ratifies and institutionalizes this reality, and if the parent who has been deprived of physical custody rights may become unable to engage in taking care of the child and become separated for life, such state is legitimate and will not be remedied.

In sum, if the physical custody rights can be taken away from the other parent, one of the parents can be legally rejected from caring for the child during marriage without engaging in acts such as abduction.

Furthermore, considering that the focus on record of child care is institutionalized for the designation of the custodian, and that the ratio of child care by the mother will inevitably be high during infant and toddler stage of the child, it may become popular practice after the institutionalization for the mother who fears being disadvantaged in a dispute over legal custody and/or physical custody rights to apply for designation as the custodian while the child is at infant and toddler stage.

Once the mother is designated as the custodian in the family, the relationship between the parents will become fully fixed. If the father who has been deprived of physical custody rights wishes to continue engaging in caring for the child, he must avoid offending the mother who has been designated as the custodian and be forced into full obedience.

On the other hand, the father who has been deprived of physical custody rights will have “obligation to support a minor child” imposed, so the mother can order the father to pay child support based on the “right to claim support for a minor child.”

Therefore, a discriminatory structure based on sex will occur in the family even during marriage, and the relationship between the wife and husband will become one of dominance and obedience. Such relationship will continue after divorce.

In other words, regardless of after divorce or during marriage, the “matriarch system” where the mother with the physical custody rights controls the father deprived of physical custody rights and the child may be created in fact, which may violate the provisions of Article 14 of the Constitution which prescribes “equality of the sexes” (Note 3).

If the proposed system is realized, men will feel the risk of caring for children, and avoid getting married. This means the “collapse of the family system” in Japan.

The proposed system will also institutionalize limitation or elimination of the child’s relationship with the father. As it has been pointed out that limitation or elimination of the relationship between parent and child without reasonable grounds is child abuse (Note 4), it may infringe on the “interest of the child.” It also violates Paragraphs 1 and 3 of Article 9 of the U.N. Convention on the Rights of the Child (Note 5).

Proposal of such system also violates the purpose of consultation with the Family Law Subcommittee of the Legislative Council which instructed to prioritize the consideration for the “interest of the child” (Note 6).

The Subcommittee includes multiple members who publicly stated that “interest of the mother”

supersedes the “interest of the child” (Note 7), and it can be assumed that the proposed system aims to introduce the “matriarch system.” Moreover, the Subcommittee includes members who are active judge, former judge who were seconded to the Ministry of Justice through the judge/prosecutor exchange system (Note 8), and interested party with attorney who handles divorce litigations, and has been noted that it may prioritize the interest of the courts and attorneys (Note 9). Either way, it is clear that the system was not proposed from the perspective of protecting the “interest of the child” from the members of the Subcommittee.

In addition, the proposed system extends to the design of the legal custody and physical custody right system during marriage, which is out of scope of deliberation requested which limits the scope to “issues related to divorce.”

Consequently, we must conclude that the proposed system to be submitted by the Family Law Subcommittee of the Legislative Council significantly diverts from the contents and the purpose of consultation by the Minister of Justice.

Ignoring this proposal will not only infringe the interest of children who hold the future of Japan, and significantly obstruct their healthy growth, but may allow reinstatement of the “patriarch system” abolished from the perspective of “equality of the sexes” after the second world war under the current Constitution in the form of “matriarch system.”

Proposal of such obsolete system runs counter to the global trend which prioritizes the “interest of the child” and institutionalizes “joint legal custody (joint physical custody)” (Note 10).

Therefore, the Family Law Subcommittee of the Private Sector Legislative Council believes that a system that truly caters to the “interest of the child” should be proposed subject to deliberation of the concerns over the system proposed by the Family Law Subcommittee of the Legislative Council established by the Ministry of Justice.

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Note 1. <https://www.moj.go.jp/content/001370938.pdf> <https://www.moj.go.jp/content/001370937.pdf> (Japanese language only), See: Minutes of the 13th Meeting of the Family Law Subcommittee of the Legislative Council (<https://www.moj.go.jp/content/001371613.pdf>)

Note 2. See “The Darkness of Parental Child Abduction Business (*Jisshi-yukai-bijinesu-no-yami*)” by Ryoko Ikeda (Asuka Shinsha, 2021), etc. (<http://www.oyako-law.org/swfu/d/auto-RzpDuL.pdf>)

Note 3. [https://www.japaneselawtranslation.go.jp/en/laws/view/174#je\\_ch3at5](https://www.japaneselawtranslation.go.jp/en/laws/view/174#je_ch3at5)

Note 4. <https://www.healthypplace.com/abuse/articles/impact-of-parental-child-abduction>

Note 5. <https://www.unicef.org.au/our-work/information-for-children/un-convention-on-the-rights-of-the-child>

Note 6. Minister of Justice press conference: “I believe the review of family law system regarding the impact of divorce on the upbringing of children is an urgent issue under the current state of social affairs. In addition, it is an especially important issue that will have significant impact on the citizen’s family life, or the growth of children who experience divorce of the parents.

We have decided to seek advice of the Legislative Council, and the Council is expected to consider a wide range of themes related to divorce based on this consultation.

With respect to issues that affect children, I expect a review based on reality from the “children-

first” perspective to ensure the best interest of the child.”  
([https://www.moj.go.jp/hisho/kouhou/hisho08\\_00161.html](https://www.moj.go.jp/hisho/kouhou/hisho08_00161.html)) (Japanese language only)

Note 7. Excerpt from the Minutes of the First Meeting of Family Law Subcommittee of the Legislative Council on March 30, 2021

- Member Tamie Kainou: I was a faculty member at the Ochanomizu University. I study gender law, and specifically studied the relationship between law and violence against women, including spousal violence. I would like to speak from this position. I have been interested in the spousal violence issues and have studied it for a long time. Twenty years have passed since the Act of on the Prevention of Spousal Violence and the Protection of Victims was enacted in 2001, but the social awareness, including in the judiciary, is insufficient. Spousal violence is of course not limited to physical violence.
- Member Chieko Akaishi: I am the Director of the non-profit organization Single Mothers’ Forum. My mission is to make the voices of single parents heard. Child support is an urgent issue. Therefore, rather than discussing it as part of the family law system, it should be prioritized. As Professor Kainou stated, I believe treating spousal violence not as an exception, and making a clear distinction within the family law is very important. My responsibility is to make the voices of single parents heard.
- Member Naoko Harada: I am Naoko Harada, a member of the Fukuoka Bar Association. I belong to an all-women law firm and mainly handle domestic relation cases (Note: Vice President of the Japan Federation of Bar Associations, served as a member of the Committee on Equality of Men and Women until 2009). I am a practicing attorney, and represent women in many divorce cases, so I may speak more as an interested party. My concern is that spousal violence is deemed to be an exception despite 30% of women having experienced spousal violence. Should it be treated as an exception? Proving spousal violence is extremely difficult, and if it cannot be proved, it is deemed not to have happened, and could be labeled as spousal domestic violence case. This is all the more true for psychological spousal violence. Law can apply to cases where communication (between the parents) is impossible due to high conflict, and joint legal/physical custody of a child is difficult in such a case.

Excerpt from the Minutes of the Second Meeting of Family Law Subcommittee of the Legislative Council on April 27, 2021

- Member Naoko Harada: In case of a divorce, and the cause of divorce may vary, if an extremely significant conflict exists (between the parents), being told to stay calm for the child or to devote yourself as a parent for the sake of the child, is really difficult.

In addition, the Anti-Poverty Network for which Chieko Akaishi serves as the Vice President and the non-profit organization All Japan Women’s Shelter Network / Kyofukai Japan Christian Women’s Organization (engaged in the “comfort women” campaign which contradicted the facts with the Korean Council for Justice and Remembrance) that Keiko Ohtsu serves as the Director for are pointed out to share the same office. With respect to Ms. Akaishi, refer to “Conservative politicians destroy families” by Yoshiko Sakurai (Sankei Shimbun, July 6, 2021)  
[http://www.moj.go.jp/shingi1/housei02\\_003007](http://www.moj.go.jp/shingi1/housei02_003007) (Japanese language only)

Note 8. <https://www.sankeibiz.jp/econome/news/210616/ecc2106160600001-n1.htm> (Japanese language only)

Note 9. <http://oyako-law.org/index.php?Parental%20Child%20Abduction>

Note 10. <https://www.moj.go.jp/content/001318630.pdf> (Japanese language only)