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THE LEGACY OF INSTITUTIONALIZED GENDER INEQUALITY IN SOUTH KOREA: THE FAMILY LAW

ROSA KIM*

I. INTRODUCTION

In January 1991, significant changes in the Korean family law went into effect as a result of three decades of intensive lobbying by women's rights advocates.¹ The revised law guarantees unprecedented rights for women in the areas of marriage, divorce, child custody, and property inheritance. Although the law retains an unmistakable bias in favor of males, and social attitudes have not caught up with the changes instituted in favor of equal rights for women, the revision represents a watershed for the advancement of gender equality in Korea.

For women's rights advocates in Korea, the primary challenge has been to reconcile a social order based on Confucian² patriarchy with the democratic ideology of sexual equality in a climate of rapid economic and political change. Although the Korean Constitution guarantees fundamental equality at law,³ the norms and values that guide gender relations in Korean daily life continue to be based on Confucian ideals of male superiority.⁴ The notion of sexual equality is alien to Confucianism, which views society as an "ordered inequality," stress-

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¹ In 1973, 61 women's organizations formed the All Women's Federation to Revise Family Law, whose campaign to change the discriminatory aspects of the family law resulted in partial revisions in 1977. KOREAN WOMEN'S DEVELOPMENT INSTITUTE, KOREAN WOMEN ON THE MOVE 32 (1985).

² See *infra* part II for a definition of Confucianism.

³ Article 11 provides that "all citizens shall be equal before the law, and there shall be no discrimination in political, economic, civic or cultural life on account of sex, religion or social status." Article 36(1) states that "marriage and family life shall be entered into and sustained on the basis of individual dignity and equality of the sexes." Other constitutional provisions guaranteeing equal rights include the right to vote (art. 24), the right to hold public office (art. 25), the right to receive an education (art. 31(1)), and the right to work (art. 32(1)). The document specifically provides special protection to women by outlawing unjust discrimination in the areas of employment, wages, and working conditions (art. 32(4)), and requiring the State specifically to promote the welfare and rights of women (art. 34(3)). KOREA CONST.

⁴ CHUNG-HEE SOH, THE CHOSEN WOMEN IN KOREAN POLITICS: AN ANTHROPOLOGICAL STUDY 20 (1991).

ing inherited social status and roles, rather than individual will and freedom of choice.⁵

To understand the law of a different culture, the observer must appreciate the systemic and substantive particularities of that culture. As long as the law remains a means to realizing justice in accordance with a society's ideals, it cannot be considered apart from such ideals.⁶ Comparing Western and Eastern legal systems, even in the broadest sense, requires a high degree of awareness regarding the underlying social, political, and cultural differences. Without this awareness, the comparison results in value-laden judgments and misguided conclusions. Fundamental to a study of Korean law is the understanding that in Korea, many aspects of the law are founded not in Western ideals of egalitarianism and democracy, but in a deeply entrenched Confucian tradition of hierarchy and authority.⁷

This Note will focus on the evolving Korean family law and its inherent gender inequality. Part II will discuss the cultural foundation from which the family law derives to highlight the incompatibility between Confucian ideals and gender equality. Part III will analyze the family law and the recent significant revisions in the areas of marriage, divorce, child custody, and property inheritance. Part IV will address the role of international law in effecting a more equitable legal identity for Korean women. Part V offers suggestions for future strategies to further the trend toward gender equality in Korea. Finally, Part VI concludes by reiterating the need to reconcile law and culture in order to secure equal rights for women in Korea.

II. THE CONFUCIAN TRADITION

A. *Historical Background*

Confucianism is a philosophy and set of social and ethical standards adopted by the leaders of the Yi dynasty (1392-1910), the last Korean monarchy, as the foundation of their sociopolitical program.⁸ Based on the premise that harmony between nature and human affairs is essential, the Confucian social order sought to achieve this harmony

⁵ *Id.*

⁶ DAE-KYU YOON, *LAW AND POLITICAL AUTHORITY IN SOUTH KOREA* 27 (1990).

⁷ *See id.* at 29-30.

⁸ *Id.* at 5-6. The Yi rulers adopted a philosophy known as Neo-Confucianism, which blended the philosophy of Confucius with Buddhist elements favored by the preceding Koryo dynasty (936-1392). The principal tenets of Neo-Confucianism were formulated by Chu Hsi of Sung China. *Id.* at 6.

through an elaborate system of hierarchical relationships.⁹ During the Yi era, Confucian philosophy served as the guideline for state administration, social regulation, and all personal relationships.¹⁰

Fundamental to the Confucian philosophy is the belief that inequality in social relationships—between the generations, the classes, and the sexes—is not only natural but essential for peace and harmony.¹¹ The five cardinal relationships of Confucian philosophy are father-son, ruler-subject, husband-wife, elder brother-younger brother, and friend-friend.¹² With the exception of the last category, these relationships are all strictly based on a dominant-subordinate configuration. This emphasis on a natural hierarchy among members of the society meant that Koreans during the Yi dynasty regarded monarchy and aristocracy, rather than democracy, as the most natural forms of government.¹³

B. *Women and the Family*

In Korea, the family was the core institution of the Confucian social order.¹⁴ The family formed the basic economic, political, social, and religious unit.¹⁵ In a traditional family system, only the paternal line relatives were regarded as relatives. As such, social class and rights were passed on only from the fathers to the sons, and first-born males held the right to lineal succession. Marriages took place only between members of different blood clans, which were determined solely according to the paternal line.¹⁶

Throughout the Yi dynasty, Koreans strictly observed the succession of male lineage and the prohibition of marriage among members of the same blood clan.¹⁷ Under this scheme of male dominance, marriage served only to provide male children to continue the family line.¹⁸ The high premium placed on bearing male children was indica-

⁹ *Id.* at 6.

¹⁰ *Id.*

¹¹ Vipin Chandra, *Korean Human-Rights Consciousness in an Era of Transition: A Survey of Late-Nineteenth Century Developments*, in *HUMAN RIGHTS IN KOREA: HISTORICAL AND POLICY PERSPECTIVES* 29-30 (William Shaw ed., 1991).

¹² *Id.* at 290 n.9.

¹³ *Id.* at 36.

¹⁴ ANDREW C. NAHM, *KOREA: TRADITION & TRANSFORMATION* 511 (1988).

¹⁵ MOON JEE YOO MADRIGAL, *THE ROLE OF WOMEN IN KOREAN SOCIETY WITH EMPHASIS ON THE ECONOMIC SYSTEM* 19 (1979).

¹⁶ YUNG-CHUNG KIM, *WOMEN OF KOREA: A HISTORY FROM ANCIENT TIMES TO 1945*, at 89 (Yung-Chung Kim ed. & trans., 2d ed. 1977).

¹⁷ *Id.*

¹⁸ *Id.* Failure to bear a son was among the seven evils for which women were accountable,

tive of the belief that an individual is a critical link between past and future, that the family is the basic social institution maintaining this linkage, and that the family can only continue through the male line.¹⁹ Historically, a woman's sense of identity derived from her children, namely the sons she was expected to bear for the sake of perpetuating her husband's ancestry.²⁰

Under the Confucian ethic of the Yi era, men were the only structurally relevant members of society, and women were essentially relegated to social dependence.²¹ Confucianism subordinated women to men and assigned women to stereotypical social roles: the chaste woman, the devoted wife, the dedicated mother.²²

Traditional Confucian ideals of patrilineal succession in Korea remained unchanged beyond the Yi dynasty and into modernity. Korea's staunch adherence to these traditions has surpassed that of China and Japan, where Confucianism also flourished.

C. *The Legacy of Confucianism and the Status of Women*

While it is inevitable that social change accompanies modernization and industrialization, the Confucian model of the family has remained largely intact in Korean custom throughout the twentieth century. Because women continue to hold an inferior status in the family by custom, the effort to grant women greater equality has encountered ideological opposition.²³ Social change for women is slow and difficult because residual Confucian institutions continue to permeate Korean society.

and for which the husband was entitled to expel his wife. The other vices were disobedience to parents-in-law, adultery, jealousy, hereditary disease, garrulousness, and larceny. *Id.* at n.1.

¹⁹ Hesung Chun Koh, *Korean Women, Conflict, and Change: An Approach to Development Planning*, in *KOREAN WOMEN: VIEW FROM THE INNER ROOM* 165 (Laurel Kendall & Mark Peterson eds., 1983).

²⁰ DAVID I. STEINBERG, *THE REPUBLIC OF KOREA: ECONOMIC TRANSFORMATION AND SOCIAL CHANGE* 75 (1989).

²¹ Martina Deuchler, *Preface* to *KOREAN WOMEN: VIEW FROM THE INNER ROOM*, *supra* note 19, at 1. The notion of continuing the male line is so highly valued that even today the practice of aborting female fetuses is commonplace and has become increasingly widespread with the advent of amniocentesis. The Planned Parenthood Federation of Korea estimates that one million female fetuses are aborted each year. Sue Neales, *South Korea: No Joy for Girls*, Reuter Textline, Oct. 3, 1990, *available in* LEXIS, Nexis Library, Reuter File. Even though abortions are illegal in Korea except for medical emergencies and in cases of rape or incest, the government does not prosecute actively doctors who perform abortions, even those who perform sex-selective abortions. *Id.* Sex-selective abortions are causing a shortage of females; by the year 2010, there will be 400,000 more men of marrying age than women in Korea. *Id.*

²² Deuchler, *supra* note 21, at 2.

²³ See *infra* part IV.

The patrilineal family register is an example of such an institution. The register is a system of recording personal identification according to one's male lineage, equivalent to a birth certificate. Unlike a birth certificate, however, the family register carries great social significance because it denotes the clan to which one belongs. As such, the register reveals one's ancestral history, social class, and place of origin.²⁴ The family register is the source for identification cards, passports, and official documents.²⁵ The registration process is not only patrilineal, but patrilocal—the wife abandons her family register and is transferred to the husband's family register upon marriage.²⁶ The wife's identity is literally merged into that of the husband's family. Children born of a marriage are automatically registered under the father's family register.

Confucian customs and attitudes towards women remain a powerful influence in Korean social and legal culture. Because the family remains at the core of the Confucian social order in Korea, the primary source of institutionalized gender inequality is the family law. The 1991 revisions represent a significant victory for women's rights advocates and may signal a new era for the status of Korean women.

III. FAMILY LAW

In many ways, gender inequality in Korean daily life derives from the family law, which has been essentially a codification of Confucian ethics regarding the family.²⁷ The old family law, which went into effect in 1960 and was revised in 1977, upheld patriarchal values in the key areas of family headship, definitions of relatives, adoption, and property and parental custody rights in divorce.²⁸ After decades of struggle by women's rights advocates, the Korean parliament passed a bill proposing major revisions of the family law in 1989, and the amended version of the law went into effect in January 1991.²⁹ These recent revisions are the most significant breakthrough for women's legal rights to date in the area of family law. Despite the revisions favoring

²⁴ See John McBeth, *A Family Feud for Confucians and Women*, FAR E. ECON. REV., Feb. 26, 1987, at 38-41.

²⁵ STEINBERG, *supra* note 20, at 74.

²⁶ *Id.* at 75.

²⁷ According to Lee Tai Young, Korea's first female lawyer and founder of the Korea Legal Aid Center for Family Relations, "from [family] law comes all discrimination in this society. People learn discrimination in the home—men against women, first son against second son, father against mother. This is the original trouble-maker." Clyde Haberman, *Seoul Journal; Defining Kith and Kin in the Land of Kim and Lee*, N.Y. TIMES, Feb. 23, 1987, at A4.

²⁸ SOH, *supra* note 4, at 21.

²⁹ MINISTRY OF POLITICAL AFFAIRS, REPUBLIC OF KOREA, WOMEN'S POLICIES IN KOREA 17 (1992) [hereinafter WOMEN'S POLICIES].

women in marriage and divorce, child custody, and property inheritance, however, the law continues to presume male superiority.³⁰

Korean family law, enunciated in Book IV ("Relatives") and Book V ("Succession") of the Korean Civil Code (hereinafter "Family Law"),³¹ embodies the Confucian legacy regarding the family. Confucian activists in Korea, who wield considerable political influence, especially in rural areas, claim that Western influences have corrupted Korea and that the Family Law is the only remaining vestige of traditional Korean culture.³² Other Koreans regard the Family Law as outmoded in modern society, yet maintain fundamental respect for their Confucian heritage.³³

Prior to the current revisions, inequality between the sexes with regard to domestic relations was enshrined in numerous provisions. Perhaps the most indicative of gender inequality was the requirement that headship of the household be passed only to the oldest son or grandson regardless of age or ability.³⁴ Likewise, inheritance provisions favored sons over daughters.³⁵ In the area of divorce, fathers automatically obtained custody of children and property was unequally divided.³⁶ Moreover, the definition of relatives for the purposes of succession and inheritance included up to third cousin for male heirs, but only up to first cousin for female heirs.³⁷ Finally, intra-clan marriage was prohibited only with regard to the paternal line.³⁸ The revised law contains major amendments to most of these provisions.

³⁰ See *id.* at 17-18.

³¹ KOREAN CIVIL CODE, Books IV and V, reprinted in KOREAN WOMEN'S DEVELOPMENT INSTITUTE, STATUTE BOOK ON KOREAN WOMEN 53-118 (1992) [hereinafter Family Law].

The Korean legal system evolved from early influences of Chinese legal institutions. As a result of the Japanese occupation between 1910 and 1945, it was later influenced by Japanese law which has its origin in German and French code systems. CHIN KIM, KOREAN LAW STUDY GUIDE 3 (1987). After the Republic of Korea was established in 1948, the legislature adopted six basic legal codes collectively called *yukpop*: Civil, Criminal, Commercial, Civil Procedure, Criminal Procedure, and the Constitution. *Id.* at 6-7. The Civil Code consists of five books; the first three contain general provisions, property rights, and obligations, and the fourth and fifth books address the family and succession. *Id.* at 10.

³² Haberman, *supra* note 27, at A4.

³³ *Id.* For example, many, if not most, Koreans regard the Confucian principles of respect for the elderly and loyalty to the ruler as intrinsic to their cultural heritage. Sam Jameson, *Changing Lifestyles; S. Koreans Shake Family-Tree Rules*, L.A. TIMES, Mar. 17, 1992, at 4.

³⁴ KOREAN WOMEN'S DEVELOPMENT INSTITUTE, STATUS OF WOMEN IN KOREA 55 (1991) [hereinafter STATUS OF WOMEN].

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

A. *The Revised Law*

1. Marriage

The most dramatic change in the marriage law favoring women's rights provides that the domicile of a married couple is to be determined by mutual agreement, rather than automatically presumed to be the husband's residence.³⁹ Although this provision seems minor on its face, it is symbolically significant in that a woman's ability to help determine the couple's domicile erodes the notion of a woman's literally "entering" the husband's family as a matter of law and custom.

Some discriminatory aspects of the marriage provisions remain unchanged. First, the minimum age for matrimony is eighteen years for males and sixteen years for females.⁴⁰ This provision reflects the strong preference for wives to be younger than their husbands, presumably to ensure the wives' fertility and to maintain the male dominant power structure.

Second, marriage is prohibited between parties with a common surname or origin of ancestry.⁴¹ Such a marriage is declared null and void upon discovery of the forbidden relationship.⁴² These provisions are the source of heightened controversy in Korea, as they perpetuate the Confucian system of patrilineage.⁴³

Third, the law prohibits a woman from remarrying for six months after the termination of her previous marriage, unless she gives birth after that marriage.⁴⁴ Ostensibly, this restriction serves to ensure that children born of a marriage are properly registered according to the biological father's identity. This provision discriminates against women by virtue of their reproductive capability and restricts outright their freedom to make this personal decision.

Fourth, the law provides that the wife *shall* have her name entered in the husband's family register upon marriage.⁴⁵ Where the wife is the head or successor to the head of her family (because there are no males), however, the husband *may* have his name entered in his wife's

³⁹ Family Law, *supra* note 31, at art. 826.

⁴⁰ *Id.* at art. 801.

⁴¹ *Id.* at art. 809.

⁴² *Id.* at art. 815.

⁴³ See *infra* part IV.B.1.

⁴⁴ Family Law, *supra* note 31, at art. 811.

⁴⁵ *Id.* at art. 826(3).

family register.⁴⁶ Males enjoy the prerogative of choosing to renounce their family registers while women must do so as a matter of law.

2. Divorce

a. *Settlement of Property*

The revised divorce law entitles a woman upon divorce to seek a share of the couple's property in proportion to her contribution to the accumulation of such property.⁴⁷ Previously, the wife had no legal right to a portion of the assets upon divorce.⁴⁸ Consequently, women enjoyed little freedom to seek divorce even when they were victims of their husbands' abuse, due to concern over their livelihood as well as their reputation. While the right to property is an important one for women, the prevailing attitude that divorce is a social taboo and that divorced women should not remarry will be slow to change.⁴⁹

b. *Child Custody*

Prior to the revisions, a woman who filed for divorce, even if the grounds were charges of physical or mental abuse, automatically lost custody of her children unless the man waived this right through a special custody agreement.⁵⁰ Under the revised law, the father no longer enjoys automatic custody of his children upon divorce. Rather, this right is determined either by the couple's mutual agreement or by the Family Court.⁵¹ Women now have a legal basis for participating

⁴⁶ *Id.*

⁴⁷ *Id.* at art. 839(2) (Claim for Division of Property) provides:

(1) One of [the] parties who has been divorced by agreement, may claim a division of property against the [other] party.

(2) If no agreement is made for a division of property as referred to in Paragraph (1), or if it is impossible to reach an agreement, the Family Court shall, upon request of the parties, determine the amount and method of division taking into consideration the amount of property realized by cooperation of both parties and other circumstances.

(3) The claim for division of property as referred in Paragraph (1) shall be extinguished at the expiration of two years from the day of divorce.

⁴⁸ YUN HU-JONG, POP YOSONGHAK PYONGDUNGKwon KWA YOSONG [WOMEN AND THE LAW] 92 (1989).

⁴⁹ See NORMAN JACOBS, THE KOREAN ROAD TO MODERNIZATION AND DEVELOPMENT 214-15 (1985).

⁵⁰ YUN, *supra* note 48, at 92.

⁵¹ Family Law, *supra* note 31, at art. 837 (Divorce and Responsibility for Fostering and Education of their Children) provides:

in the decisionmaking regarding children upon divorce. As the law stood prior to the revisions, the inequitable distribution of rights concerning child custody was particularly egregious in a society where women bear the sole burden of caring for children. This change should help alleviate a woman's inhibition to leave an abusive marriage for fear of losing custody of her children.

3. Property Inheritance

Intestate succession laws prior to the revisions provided that a female child was entitled to only one quarter of the male child's inheritance, and a married female child was entitled to even less.⁵² The revised inheritance laws provide equal treatment for daughters, such that they can inherit the same proportion as sons.⁵³ Both men and women without children are entitled to half of their spouse's inheritance upon the death of the spouse, while the spouse's parents are entitled to the other half.⁵⁴ Previously, the childless widower enjoyed the unique male privilege of receiving his wife's entire inheritance upon her death.⁵⁵

B. *Remaining Vestiges of Confucianism*

The amended law does not abolish two controversial provisions: the intra-clan marriage ban and the family headship system. Women's rights advocates have fought to abolish these provisions because they lie at the heart of the discriminatory patrilineal system. Pro-Confucian

(1) The parties shall determine by agreement matters concerning fostering and education of their children.

(2) In case an agreement on the matters concerning fostering and education as set forth in Paragraph (1) has not been made or able to make, the Family Court may, upon the application filed by the parties, decide the matters necessary for such fostering and education by taking into consideration of [sic] the age of their child or children, property status of the father and mother and another circumstances thereof, and the Family Court may change at any time such matters or may take any other proper disposition.

(3) Except for matters relating to fostering and education, the provisions of Paragraph (2) shall not effect any change of the right and duty of the parents.

⁵² YUN, *supra* note 48, at 92.

⁵³ Family Law, *supra* note 31, at art. 1009 (Legal Portions) provides, in pertinent part, that if there exist two or more successors in the same rank, their shares in the succession shall be divided equally.

⁵⁴ Family Law, *supra* note 31, at art. 1003 (Order of Succession of Spouse).

⁵⁵ YUN, *supra* note 48, at 92.

lobbyists, on the other hand, have fought to retain this core element of the Confucian social order, and so far have succeeded.

1. Intra-Clan Marriage

Women's rights advocates dislike the intra-clan marriage provisions contained in Articles 809 and 815 of the Family Law. Article 809 of the Family Law prohibits marriage between individuals with the same family name and same place of origin—people who share a common ancestor in their *paternal* lineage—*no matter how far back in time*.⁵⁶ By contrast, Article 815 prohibits marriages through only four generations in the case of a common ancestor in the *maternal* lineage of the partners.⁵⁷

Given that of the 42 million people in Korea, there are only 274 family names, forty-five percent of which are Kim, Lee, or Park,⁵⁸ the intra-clan marriage ban is a serious problem.⁵⁹ Women's rights advocates in Korea oppose the intra-clan marriage ban because it perpetuates the notion that only paternal lineage counts in tracing one's roots.⁶⁰ Confucian activist groups which have lobbied intensively to keep these provisions intact maintain that the ban exists to prevent the incidence of birth defects, yet this claim belies their well-publicized desire to preserve deference to paternal lineage.⁶¹ An estimated 300,000 couples have defied the intra-clan marriage ban.⁶² Pressured by the growing forces of advocates for legal reform in Korea, the National Assembly quietly instituted one-year suspensions on the ban

⁵⁶ China, where the custom originated, abandoned the practice at the turn of the century. Jameson, *supra* note 33, at 4.

Article 809 provides:

(1) A marriage may not be allowed between the blood relatives, if both surname and the origin of which [sic] are common to the parties.

(2) A marriage may not be allowed between the parties if either of them is [or] was the spouse of a male line blood relative, husband's blood relative [or] any other relative by affinity within eighth degree of relationship.

⁵⁷ Family Law, *supra* note 31.

⁵⁸ Terry McCarthy, *Out of Korea: The Kims Lay Plans to End Ancestral Confusion*, THE INDEPENDENT, Mar. 30, 1992, at 16.

⁵⁹ Marriages that defy this law are considered illegal and cannot be registered. John McBeth, *A Moon-Crossed Affair*, FAR E. ECON. REV., Feb. 26, 1987, at 39. Non-registry of marriages in Korea means that children born of these marriages are considered illegal and run the risk of not being allowed to enroll in public schools. *Id.* Moreover, wives of non-registered marriages cannot become beneficiaries of their husbands' insurance policies. *Id.*

⁶⁰ Haberman, *supra* note 27, at A6.

⁶¹ See Jameson, *supra* note 33, at 4.

⁶² This statistic is provided by the Korea Legal Aid Center for Family Relations. *Id.*

in 1978 and 1988.⁶³ This exemplifies the government's unwillingness to effect serious change in the face of pressure from the traditionalists.

2. Family Headship

The second area of the Family Law that remains unabolished is the Confucian family headship system, known as *hoju*. Under the *hoju* system, the eldest son is given priority to succeed to the headship of the family.⁶⁴ This system substantially limits the legal power of women within the family structure and is the basis for the family register system that forces a woman to abandon her own family and join her husband's family.⁶⁵ While the revisions purportedly reduced the family head's legal obligations and rights with respect to other members of his family, and eliminated some discriminatory provisions, Confucian lobbyists have prevented the system from being abolished altogether.⁶⁶

Korean women's rights advocates must contend with formidable domestic opposition to changes in the Family Law and with other traditions that maintain the status quo of gender inequality in Korean society. The women's movement in Korea therefore has looked to outside sources for assistance and has welcomed international efforts to improve the status of women globally.

IV. ROLE OF INTERNATIONAL LAW

Despite the failure to abolish all unequal aspects of the Family Law, the 1991 revisions represent a victory for women's rights in Korea. This victory can be attributed in part to the role of international law and the impetus it provided to the Korean government and non-gov-

⁶³ *Id.* During the 1977 suspension, 4577 intra-clan couples registered their marriages; in 1988, 12,433 couples registered. *Id.*

Comparatively, United States laws on intermarriage, while varying from state to state, generally prohibit marriage between people who are first cousins or nearer. The exceptions are New Mexico, which allows first cousins to marry, and Arizona, Illinois, and Indiana, which allow first-cousin marriages if both parties are elderly and hence unable to produce children. Colorado bans marriages of relatives "except as permitted by aboriginal cultures." *Id.*

⁶⁴ Choo Soo Kim, *A Study on Amendment of the Family Law for Rational Implementation of the Family Planning Program in Korea*, in *INTRODUCTION TO THE LAW AND LEGAL SYSTEM OF KOREA* 1163 (Sang Hyun Song ed., 1983). In the event that the eldest son is unable to succeed to the headship, the eldest grandson is the next in line to succeed, followed by the second eldest son, and so on. *Id.* If the family head has no son, an unmarried daughter may succeed to the family headship. *Id.*

⁶⁵ See Family Law, *supra* note 31, at arts. 778–796. Art. 778 defines family head as "a person who has succeeded to the family lineage or has set up a branch family, or who has established a new family for any other reason. . . ."

⁶⁶ *WOMEN'S POLICIES*, *supra* note 29, at 18.

ernmental entities in formulating domestic policies regarding women's affairs. Given that cultural barriers in Korea necessarily make reformation of women's legal rights in the area of family law gradual, if not incremental, women's rights advocates must look to other means to facilitate the process. The United Nations is the principal organization involved in the international effort to improve women's rights. It focuses on reforming national and international structures that promote gender discrimination.⁶⁷

A. *Convention on the Elimination of All Forms of Discrimination Against Women*

In 1979, the General Assembly of the United Nations adopted the Convention on the Elimination of All Forms of Discrimination Against Women (Convention).⁶⁸ While most international conventions addressing women's rights are corrective in nature, this Convention focuses on the rights of women in a gender-neutral manner.⁶⁹ The gender-neutral focus rejects the concept of women as a separate class and emphasizes the idea of equal treatment between men and women, rather than seeking to end existing separation or special treatment.⁷⁰

1. Scope

The Convention is the most comprehensive international instrument on women's rights to date. It defines "discrimination against women" as any distinction, exclusion, or restriction made on the basis of sex that has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, of human rights and fundamental freedoms.⁷¹ The Convention consists of general provisions regarding political rights,⁷² social

⁶⁷ WINSTON E. LANGLEY, *WOMEN'S RIGHTS IN INTERNATIONAL DOCUMENTS* at vii (1991).

⁶⁸ *Convention on the Elimination of All Forms of Discrimination Against Women*, G.A. Res. 180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/36 (1979) [hereinafter *Convention*]. See also *Declaration on the Elimination of Discrimination Against Women*, G.A. Res. 2263, U.N. GAOR, 22d Sess., Supp. No. 16, at 275, U.N. Doc. A/6716 (1967).

⁶⁹ See *Convention Concerning Maternity Protection* (Revised) (ILO), June 28, 1952, 214 U.N.T.S. 321, reprinted in LANGLEY, *supra* note 67, at 39; *Convention on the Nationality of Married Women*, G.A. Res. 1040, U.N. GAOR, 11th Sess., Supp. No. 17, at 120, U.N. Doc. A/3572 (1957), reprinted in LANGLEY, *supra* note 67, at 79.

⁷⁰ LANGLEY, *supra* note 67, at 154. For a more critical view of this neutral approach, see Hilary Charlesworth et al., *Feminist Approaches to International Law*, 85 AM. J. INT'L L. 613 (1991).

⁷¹ *Convention*, *supra* note 68, at art. 1.

⁷² See *id.* at arts. 7-9.

and economic rights,⁷³ and civil and family rights.⁷⁴ The document also addresses specific issues, such as trafficking in women and prostitution,⁷⁵ and the special needs of rural women.⁷⁶

2. Implementation

Implementation provisions require signatory states to submit periodic reports to the Secretary-General on the legislative, judicial, administrative, or other measures they have adopted pursuant to the Convention.⁷⁷ The Committee on the Elimination of Discrimination Against Women (Committee) is composed of "experts of high moral standing and competence in the field" elected by the signatory states.⁷⁸ The Committee's primary responsibility is to oversee the implementation of the Convention.⁷⁹

The document contains a provision that allows states to ratify the Convention subject to reservations, provided that the reservations are not "incompatible with the object and purpose of the present Convention."⁸⁰ The Committee has no authority to determine the compatibility of reservations with the document, and there are no provisions regarding the criteria to be used in making such a determination. Consequently, many signatory states have ratified the Convention with numerous reservations, thereby compromising the integrity of the document.⁸¹ The Committee can do little more than urge such states to reconsider the reservations with a view to withdrawing them.⁸²

Given this discretionary aspect of adherence to the Convention, in practice the Convention serves as an instrument of change more through reliance on good faith on the part of the states, and less through structural and formal means.⁸³ As such, the Convention illustrates both the potential and the limitations of international law in affecting the progress of women's rights within the individual states.

⁷³ See *id.* at arts. 10–14.

⁷⁴ See *id.* at arts. 15–16.

⁷⁵ See *id.* at art. 6.

⁷⁶ See *id.* at art. 14.

⁷⁷ *Id.* at art. 18.

⁷⁸ *Id.* at art. 17.

⁷⁹ *Id.*

⁸⁰ *Id.* at art. 28.

⁸¹ Charlesworth et al., *supra* note 70, at 633.

⁸² See *Women's Rights Body Reviews Reports from Eight States; United Nations Committee on the Elimination of Discrimination Against Women*, UN MONTHLY CHRON., Aug. 1987, at 46.

⁸³ See Charlesworth et al., *supra* note 70, at 634.

3. Family Law

In the area of family law, Part IV, Article 16 of the Convention provides for equal treatment of the sexes on a variety of issues. Signatory states agree to take all appropriate measures to eliminate discrimination against women by ensuring them the same rights as men in the following areas: entrance into marriage;⁸⁴ choosing a spouse freely and entering into marriage only with free and full consent;⁸⁵ enjoying the same rights both during marriage and at its dissolution;⁸⁶ parental rights irrespective of marital status;⁸⁷ deciding freely and responsibly on the number and spacing of their children and having access to the information, education, and means to enable them to exercise their rights;⁸⁸ guardianship, wardship, trusteeship, and adoption of children, and to similar institutions where these concepts exist in national legislation;⁸⁹ the same personal rights as husband and wife, including the right to choose a family name, a profession, and an occupation;⁹⁰ and the same rights for both spouses regarding the ownership, acquisition, management, administration, enjoyment, and disposition of property, whether free of charge or for a valuable consideration.⁹¹

Korea ratified the Convention in December 1984, and as of January 1985, the Convention went into effect as domestic law. Korea reserved Article 9, which requires the signatory states to grant women equal rights to acquire, change, or retain their nationality and the nationality of their children, as well as Article 16(g), which concerns a woman's right to choose a family name, profession, and occupation. These rights contravene the principles and systems regarding the importance of the male lineage to one's identity in Korea.⁹² Korea's reluctance to acknowledge these rights is consistent with its failure to abolish the family headship system and the intra-clan marriage ban. With the exception of the issues of nationality and family name, the amended Korean Family Law reflects important changes in accordance with the principles set forth in the Convention in the areas of marriage and divorce, child custody, and property inheritance.

⁸⁴ Convention, *supra* note 68, at art. 16, § 1(a).

⁸⁵ *Id.* § 1(b).

⁸⁶ *Id.* § 1(c).

⁸⁷ *Id.* § 1(d).

⁸⁸ *Id.* § 1(e).

⁸⁹ *Id.* § 1(f).

⁹⁰ *Id.* § 1(g).

⁹¹ *Id.* § 1(h).

⁹² See *supra* part II.

The Convention has had a positive impact generally on the advancement of women's rights in Korea. Women's organizations in Korea have coordinated efforts with international organizations to effect positive changes in Korean law.⁹³ As with most legal endeavors on an international scale, the actual impact of the Convention in the domestic forum has been gradual. Despite the problems associated with effectuating international law, the United Nations remains an important vehicle for change, albeit incremental, especially in countries such as Korea, where women have inadequate means to gain legal and social equality. If nothing more, the international arena provides an alternative channel for Korean women's organizations to gain a sense of solidarity with their counterparts in different cultures.

V. STRATEGIES FOR THE FUTURE

Strategies for the future to promote greater equality at law for Korean women should include more than continuing to revise the law, as was done with the Family Law. Women in Korea remain unaware of their own legal status and therefore do not perceive the legal system as a vehicle for achieving positive gains for their rights as women.⁹⁴ Future strategies should include mounting a serious and coordinated effort to educate women about their legal rights, and providing widespread affordable legal aid, especially to address issues of domestic relations.

Legal education must be designed to heighten awareness of women's rights through the use of mass media and popular social programs. Legal literacy is particularly crucial for women because the most equitable laws will not be useful unless women understand and use them to their advantage. A 1991 survey revealed that 29.9% of the female respondents were unaware that the Family Law reform had taken place, 33.8% knew about the reformation but not about the specific content, 34.8% knew generally about the content, and only 1.5% knew about the specific content.⁹⁵ Of the women who knew the

⁹³ In particular, the Korean Women's Development Institute (KWDI), a think tank established by the government in 1983 to develop official policies regarding women's issues, has functioned as a formal channel for international cooperation with United Nations bodies, international organizations, and institutions related to women's affairs by exchanging information, human resources, and programs. KWDI seeks to promote the status of Korean women by monitoring and evaluating the development of Korean women based on United Nations guidelines, and by conducting and participating in international conferences and overseas training courses for women. *STATUS OF WOMEN'S DEVELOPMENT INSTITUTE, ANNUAL PAMPHLET 18-20* (1992).

⁹⁴ *STATUS OF WOMEN*, *supra* note 34, at 59.

⁹⁵ *KOREAN WOMEN'S DEVELOPMENT INSTITUTE AND KITAKYUSHU FORUM ON ASIAN WOMEN*,

specific content of the reformed law, 89.3% agreed with the changes.⁹⁶ These figures suggest that women's lack of awareness of their legal rights contributes to the slowness of reform and impedes the formation of public opinion, which is vital to change on a national scale. Both the Korean government and non-governmental organizations must make education about laws and legal processes widely accessible to women of all socioeconomic groups.⁹⁷ Legal aid and family law centers should be made available especially to low-income women.

Women's rights advocates should continue their campaign to reform the Family Law further by lobbying and mobilizing support among policymakers. In addition, increased political participation of women in the legislature and at the most influential levels of government is essential not only to effect legislative decision-making, but also to provide adequate representation of women.⁹⁸ For its part, the Korean government should scrutinize regularly all the laws and regulations regarding women, especially in the key areas of criminal sanctions

A COMPARATIVE STUDY ON THE FAMILY CONSCIOUSNESS BETWEEN KOREA AND JAPAN 202-03 (1991).

⁹⁶ *Id.* at 203-04.

⁹⁷ The women's movement in Korea has spawned a variety of organizations in recent years. David Housego, *Asia's Pacific Rim: A Powerful Force for Reform*, FIN. TIMES, June 30, 1988, at ix. Many of them came to life as a result of the leadership of the Christian churches within the movement. *Id.*

⁹⁸ While the scarcity of women in Korean public life is not a surprising reality given the cultural barriers, women nevertheless must participate directly in government in order to attain equality in social and legal status. This vicious circle is an enduring product of the Yi dynasty, which imposed a strict division of labor into male (public) and female (domestic) spheres. SOH, *supra* note 4, at 21. Accordingly, women could not participate in public life, and their domestic domain clearly was valued less than their male counterparts' public domain. *Id.* Although the Yi dynasty ended in 1920, its cultural legacy remains very much intact. Participation in national politics has been hindered by this sexual division of labor, as well as by the influence of family structure and the ideology of male superiority. *Id.* at 15.

The membership of the first National Assembly of South Korea, a unicameral legislative body established in 1948, consisted of 199 men and one woman. The thirteenth National Assembly, which convened in 1988, had 293 men and six women; all six women were appointed. *Id.* at 2. In 1987, Hong Suk-ja, the first woman allowed to join the Foreign Ministry as a diplomat in 1958, and pioneer of the Korean feminist movement, became the first woman in Korean history to run for president. (Technically, the first female presidential candidate was Park Sun-Chun, who, in 1960, garnered one vote in an indirect election.) Hong ran as a member of the Socialist Democratic Party, a small progressive party that models itself along the lines of European Democratic Socialists. Clyde Haberman, *The Woman in the Race Gives Korea a Jolt*, N.Y. TIMES, Nov. 26, 1987, at A6. Hong's presidential campaign, launched mainly to draw attention to women's rights and socialist policies, lasted only two weeks. Ken Franckling, *Korean Women Torn Between Old and New; Slow Change in Land of Confucian Tradition*, UPI, Sept. 27, 1989, available in LEXIS, Nexis Library, UPI File.

for violence against women⁹⁹ and employment discrimination,¹⁰⁰ in order to ensure that they are responsive to, and effect, social change. Otherwise, the constitutional guarantees of gender equality at law will remain a hollow pretense.

⁹⁹ The Korean legal system, like the country's social institutions, does not address adequately the issue of violence against women in Korea in its various forms—physical abuse, rape, kidnapping, and forced prostitution. Endemic to the problem is the scarcity of reliable data in this area because women often choose not to report violent crimes committed against them. According to the Korean Women's Association, an estimated half of the married women in Korea have been beaten by their husbands more than once. Oh Ilson, *Wife*, Reuters, May 17, 1984, available in LEXIS, Nexis Library, Reuter File. The mistreatment of women often finds rationalization in Confucian attitudes and the unspoken belief that women "belong" to men. Koreans tend not to perceive a husband's violence against his wife as a criminal act worthy of official sanction.

Despite the unlikely probability of success, an increasing number of women are seeking legal redress against violence by men. While there are an estimated 250,000 rape cases a year in Korea, only an estimated 2% are reported. Leslie Helm, *Korean Women Try to Shed Their Second-Class Status*, L.A. TIMES, Sept. 27, 1991, at A5. Over the past ten years, an average of 40% of reported rape cases resulted in indictment, and 33% in prison sentences. *Id.* Emergency support systems for abused women consist of a telephone hotline and a few shelters. U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1990, at 939 (1991) [hereinafter COUNTRY REPORTS].

In recent years, "white slavery"—kidnapping women and selling them to brothel owners—has become an important issue with women's rights groups. Michael Breen, *South Korea 10; Social Problems Escalate*, FIN. TIMES, May 16, 1990, at x. In 1989, for the first time, the government acknowledged that "human trafficking" was a serious social problem. Despite official acknowledgment, some charge that the police and other officials actually contribute to the problem by giving advance warning of raids to brothel owners, or by simply ignoring the problem. See *Shanghaied for Sex*, FAR E. ECON. REV., Sept. 28, 1989, at 125–26. Female kidnap victims complain that the police are uncooperative and unsympathetic to their efforts to escape from their abductors. COUNTRY REPORTS, *supra*, at 939. Whatever the explanation for the upsurge of "human trafficking," it is clear that the official response has been tentative at best. On the other hand, the public has encouraged the government to take greater responsibility for the systematic victimization of women.

The Korean Criminal Code also contains a provision making adultery a crime punishable by incarceration. *Adultery Law Retained in New Code*, KOREAN WOMEN TODAY (Korean Women's Development Institute, Seoul, Korea), Summer 1992, at 6. In 1992, the Korean Ministry of Justice decided to retain the Adultery Law after a national debate, but reduced the maximum jail sentence for adulterers from two years to one year. *Id.* Women's groups had argued in favor of retaining the law, claiming that it helped curb adultery and protect victims, mostly women. *Id.* Another provision, which punishes men who trick women into having sexual relations by promising marriage, was abolished in 1992. *Id.*

¹⁰⁰ Industrial and commercial development since the 1960s have put an increasing number of women to work. The textile and electronics industries, in particular, depend on a poorly-paid female work force for their success. *Breaking Down Barriers and Getting in Step*, FAR E. ECON. REV., Jan. 5, 1984, at 39. Most married women do not work outside the home, however, and large companies expect a woman to resign upon marriage, or no later than the birth of her first child. COUNTRY REPORTS, *supra* note 98, at 938. Some companies have built large dormitories to house their female employees, a practice which facilitates organizing work shifts on a twenty-four hour basis, thereby maximizing the hours that women work. Housego, *supra* note 97, at ix.

In 1988, the National Assembly enacted the Equal Employment Opportunity Law, which

V. CONCLUSION

If it is true that law functions as a system of beliefs that makes social, political, and economic inequalities appear natural,¹⁰¹ Korean law is certainly no exception. Hopefully, the Family Law revisions signalled an era in which it will become increasingly irrational to make the existing inequalities in Korea appear natural. As Korean society strives more and more to embrace democracy, the systematic discrimination against women, as institutionalized in the laws, will become difficult to justify.¹⁰²

In order for women to achieve equal status, Korean society must make itself open to the view that acknowledging the value of gender equality need not interfere with reverence for tradition, and that rejecting systemic inequality is not necessarily synonymous with rejecting one's cultural heritage. Yet to understand that heritage is to appreciate the incongruity between tradition and change, and, to a certain extent, to resist the erosion of cultural identity. Ultimately, however, preservation of Korean cultural heritage may be better achieved if some Confucian values give way to notions of gender equality.

prohibits sexual discrimination in hiring and wages; the law also requires better working conditions for women, including limits on overtime and a ban on night work. COUNTRY REPORTS, *supra* note 98, at 938. Although the law has not been broadly implemented, the government has indicted some companies for refusing to take applications from women for advertised jobs, or for advertising openings for males only. *See id.*; *South Korea: Banks Fail to Eradicate Sex Discrimination*, Reuter Textline, Aug. 24, 1992, available in LEXIS, Nexis Library, Reuter File.

Most recently, the government has taken special notice of the banking industry, which systematically violates equal employment regulations. *South Korea: Firms Fined for Male Biased Recruiting Practices*, Reuter Textline, Mar. 25, 1990, available in LEXIS, Nexis Library, Reuter File. Most banks classify their employees as managers, clerks, and female clerks, and provide unequal treatment to female employees in wages, promotions, and working conditions. The Ministry of Labor Affairs has threatened to take legal action against banks unless they comply with the non-discrimination laws. *Id.*

Pressure on the Korean government to address women's issues and enforce the relevant laws has generated momentum in favor of the women's movement in the areas of criminal and employment law. The societal perceptions of gender roles, however, are inextricably linked to the institution of the family. As such, social and legal equality can only come about through changes in these perceptions.

¹⁰¹ Charlesworth et al., *supra* note 70, at 613.

¹⁰² In the political arena, the trend of democratization continues with the 1992 election of the first civilian president in 32 years: Kim Young Sam. In 1993, Kim launched an unprecedented campaign against corruption in Korean government to further the democratization process. *See* Cayman Kim, *Kim's Reforms Draw Praise and Criticism*, Kyodo News Service, Sept. 24, 1993, available in LEXIS, World Library, Allwld File.