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**Dr. Lee Tae-Young and the Korean Family Law**

by Sonia R. Strawn

This paper is an attempt to tackle the nearly impossible task of presenting a discussion on three subjects in one: the Korea Legal Aid Center for Family Relations, Dr. Tae-Young Lee (Yi T’ae-Yong), and the Korean Family Law. It is improper to speak of one without the other two, but in the brief space alloted one cannot do justice to any of the three. It is indisputable that for any discussion of legal aid in Korea or of questions about Korean Family Law Dr. Lee, whose name is synonymous with both, should be present. Nevertheless, I am honored that the Royal Asiatic Society should have asked me to take her place, and I have been asked to convey her greetings as well as her gratitude for the Society’s interest and concern in her work.

It is at best a difficult undertaking to encapsulize the amazing career of a person like Dr. Lee in a few words. If she goes to buy fruit at the East Gate Market, an old grandmother who has never seen her knows Dr. Lee by her voice, which has gone throughout Korea on the radio as she has broadcast for many years on the need to revise the Family Laws and to improve the status of women.

Dr. Lee, born and reared in a gold mining area of North Korea where she early lost her father—and so was brought up by her Christian mother and grandmother – never saw a train or any other accoutrements of the West until she went to P’yongyang to high school. After graduating in Home Economics from Ewha Womans University in 1936, she married Dr. Yil-Hyung Chyung (Chong Il-Hyong), recently returned from the United States where he had received a Ph.D. in sociology from Drew University.

During the early years of their marriage Dr. Chyung spent five years in prison for his activities in protest against the Japanese oppression, and Dr. Lee taught, made and sold quilts from door to door, and dia other jobs to support her children and care for her mother-in-law, as well as provide for the basic needs of her husband. So it was with Liberation in 1945 that Dr. Chyung urged her, upon his release from prison and entry into political life, to embark on the path of fulfilling her childhood dream of becoming a lawyer. She matriculated at Seoul National University as the first coed student, the first married woman student, and the first mother in the [page 38] College of Law. Four years later she became the first woman graduate of that prestigious law school and then passed the extremely difficult national judicial examination in 1952. Thus she became the first woman lawyer in Korea’s 5,000-year history.

At first she wanted to become a judge, but this request was turned down by the current president, Syngman Rhee, because she was the wife of an opposition party politician. (Dr. Chyung went on to hold the longest tenure, eight terms, in Korea’s National Assembly, being elected continually from the central district of Seoul.) Dr. Lee remained undaunted and so turned her sights towards helping poor, uneducated, needy women who appeared to her as if they had been standing in line for 5,000 years, waiting for someone to whom they could talk about their troubles and who could give them family counseling and legal advice.

That was the beginning of her work in legal aid in which she is today well known as pioneer. In 1956 she opened the doors of what has grown to be the Korea Legal Aid Center for Family Relations, which in October 1981 celebrated its 25th anniversary. As she saw the need for her services grow, and responded by expanding the center and its personnel, she helped to organize the Family Court of Korea as well as serving for eight years as Dean of the Law College at Ewha University, her alma mater.

Dr. Lee’s master’s and doctoral theses studied the system of, and changes in, divorce in Korea, and have provided a basis for later studies. Gradually, awards both from within and without Korea have come to recognize her stature in the fields of law and of legal aid work. In 1971 she received the World Peace through Law Prize in Yugoslavia, in 1975 she was presented with the Magsaysay Prize for her work on behalf of equal juridical rights for women, and as recently as 1981 she became a member of the International Commission of Jurists, one of four women among a worldwide membership of 40.

Her credentials for giving other people advice on what constitutes a ‘happy family life’ certainly include not only her professional training and long experience in counseling, but also her own personal background. She has been happily married for 46 years (to the same man), has three daughters and a son, and 12 grandchildren.

When on August 25, 1956, Dr. Lee opened the doors of a small rented office at the Women’s Issues Research Institute, she founded the first legal aid center in Korea. Some critics said that as the first woman lawyer she probably could not get clients otherwise, and so had no choice but to dispense legal advice free of charge. History has proved that this was not the case. However, it is true that women who were poor and ignorant of the law [page 39] became her first clients. She recalls that in those early days her biggest expense was for tissue to wipe away the tears of many who came to tell her their sad stories of troubled situations at home.

Now, 25 years later, still as the center’s director, Dr. Lee notes in retrospect that she has devoted half of her lifetime to this work, never having received any salary or other remuneration from the first day to the present. The first ten years she worked by herself, but then the demands became so great that she had to turn to someone for help. She was totally worn out when some of her friends who were ordinary housewives offered to make monthly contributions and form a support group. This made possible the gradual expansion of facilities and staff until today the large center is recognized both regionally in Asia and throughout the world. In 1978 in Sydney, Australia, Dr. Lee was honored with the second International Legal Aid Association Award.

In 1976,after 20 years of moving from one rented office to another, with all the consequent inconvenience to potential clients, the women members of the center succeeded in accomplishing the amazing feat of making possible their own building to house the center. The One Hundred Women’s Building is a six-story red brick building on Yo-i Island in Seoul, a small building actually in comparison with its larger neighbors, but in the minds of the 1,700 women who made contributions so that it would become a reality, it is seen as the most significant of all. It not only houses the center’s offices, large auditorium, library and research center, but stands as a symbol to the surrounding society of what women can do with their own strength when they join together to erect a building ‘by the women, of the women, and for the women’.

In 25 years over 150,000 people have been given counseling and legal aid. Approximately 30 per cent of these have been men, and all counseling is free of charge, related either to civil or criminal matters. In fact, most questions revolve around family relations, hence the center’s name. Divorce accounts for nearly 40 per cent of the total number of cases. The counseling, which is seen as a ‘curative’ kind of program for a wound already inflicted, is done by the all-woman staff.

To continue the medical metaphor, however, it would be appropriate to emphasize the current two-pronged approach of the program. The curative counseling continues with 80 or more cases daily. At the same time, in order to work towards preventing a disease or injury from arising in the first place, a number of preventive programs have been set up, especially since the opening of the center’s new, permanent offices. These include law lectures, a Mothers’ School’ free wedding ceremonies for the poor, the [page 40] publication of a newsletter, and finally, perhaps most significant of all, the ongoing movement to revise the Korean Family Law.

What is the goal of the work of the Korea Legal Aid Center for Family Relations? To sum it up in one phrase, Dr. Lee affirms that it is to establish and maintain peace and harmony in the family, then in the nation, and of course ultimately in the world. This can be done, she feels,through ensuring the basic human rights of all people: a man cannot live in a free and just situation when such rights are not equally accorded to a woman. The center’s motto - ‘together with my suffering neighbors’一urges putting into practice the conviction that none should be denied justice because of either ignorance or poverty.

Recently the center has published an English translation of its handbook What Can I Do? which cites actual cases of the legal counselling work done there. The following two cases are illustrative of the tremendous variety of the problems which comprise its everyday work, and particularly of the difficulties which many married women still face in Korea today.

1. Q: My fiance died in the war in Vietnam. He was the only child of his parents and they are in a hurry for me to get married to him in order for me to console his soul. Is this kind of marriage recognized legally?

A: It is admirable of his parents to want to console their dead son who was killed in Vietnam, as is your intention to marry his soul. But that is only a spiritual union and marriage with a deceased person is not legally recognized. In our Civil Law because marriage comes into effect after it is registered, marriage with a disembodied deceased person cannot be registered. Therefore such marriage cannot take place.

1. Q: From the beginning of our marriage, my mother-in-law has come into our bedroom late at night every day. Even when she does not, she has called my husband to her bedroom and without fail makes him sleep beside her and sends him directly to work in the morning. My husband and I cannot continue our married life together by any means. Is divorce possible?

A: In your case divorce is possible. If a mother-in-law interferes with her son’s married life, ‘extreme mal-treatment by a spouse’s lineal ascendant’ is an applicable ground and you can file for mediation of divorce. [page 41]

What is the relationship, then, between the Legal Aid Center and the Family Law of Korea, which is the third subject for discussion here? There is a very intimate connection indeed, since the Legal Aid Center has both urged and provided evidence for the work of family law revision for nearly 30 years.

Members of the staff at the center have learned through their counseling experience that regardless of how able the counselor might be, how skilled the attorney or how wise the judge, the limitations of the law itself pose insurmountable problems in attempting to provide any individual with a just solution to a particular situation. From this growing awareness came Dr. Lee’s conviction that raising the legal status of women in Korea and eliminating discrimination against women under the law had to be an integral and long-term part of the work of the Center. So as one looks at the history of the Family Law, one learns at once that Dr. Lee and the Center formed the driving force behind the two recent major reforms of that law. In addition, at present they are hard at work for grassroots education and mobilization of ordinary Koreans to work toward the revision of the one- third of that law which is still untouched. Dr. Lee is unwilling to be satisfied with partial success in this important area.

It is important at this point to include a disclaimer about what is said next. In discussing the Korean Family Law it is not the intention to be critical of the laws of a certain country from a foreign perspective. Rather, the purpose here is to relate and affirm what it is that Korean women themselves are advocating in regard to their own law. Upon careful scrutiny it will become clear that the demands are far from radical by comparison with many other countries.

It goes without saying that most people are ignorant of the family laws of their country, nor do they care about them, except and until they have trouble. It is also true that most of us who are interested residents of Korea know even less about the Family Law of Korea, especially as almost nothing has been published in English about it, perhaps a notable exception being What Can I Do? quoted above. We do, however, give momentary attention to certain isolated laws when something is mentioned in the newspapers, such as the recent controversy at Songgyungwam (the Confucian University) over the law prohibiting marriage between persons of the same family name and place of family origin.

In every country, the reality of the family system is reflected in that country’s laws. Korea is no exception. It is not necessary to remind members of the Korea Branch of the Royal Asiatic Society about the strength of Confucian tradition in regard to human relationships in the [page 42] family with its patriarchal, patrilinear, and patrilocal character. The patriarchal system in particular has been handed down through many centuries, as emboided in the concept of the three obediences expected of a virtuous woman: obedience to her father in her youth, to her husband in her maturity, and to her son in her old age.

In 1948,the constitution of the new Republic of Korea provided in Article 9 for the equality of the sexes. However, in terms of the implementation of the Civil Code, the Family Law does not obey the Constitution. It is at this point that many women, and fortunately some men as well, have urged that certain basic changes be made in the law. Here it may be helpful to clarify briefly what is meant by ‘family law.’ Family Law refers to the rules and regulations concerned with the areas of marriage, children, family, and relatives. Within the Korean Civil Code the laws grouped together as Article 4 - Relatives, and Article 5 - Inheritance, are referred to collectively as the Family Law.

With liberation from Japan, several significant changes had occurred which affected all laws. The family structure began to change from a large, extended one to the smaller, nuclear family as the Korean economy underwent transformation from a rural, agrarian system to an urban, technological one. But it was only from the time of the promulgation of the new Civil Code in 1960,which includes several important new provisions relating to family concerns, that the Family Law as defined in the preceding paragraph came into being. It should also be mentioned that until 1954,under the Korean criminal code, there was inequality between the sexes with regard to adultery, which was a crime for women but not for men.

To summarize many years of extensive educational and legislative efforts, we may say that with the first revision of the law (which was approved in late 1957 and came into effect in 1960) a number of articles went some way towards ending discrimination against women. The salient points of this revision were:

1) The legal incapacity of married women was abolished.

2) The system of joint management of a married couple’s property was changed to a system in which each spouse may separately manage his or her property.

3) Freedom and equality were granted in matters of marriage and divorce by agreement.

4) Marriage was permitted without parental consent for women 23 years of age and men of 27 years age.

5) Husband and wife were to be treated equally in regarded to grounds for divorce. [page 43]

6) The Law of Adoption was reformed so that anyone, without regard to sex, may become an adopting parent or an adopted child.

7) Freedom to establish a branch family was granted to all who have attained the age of majority, that is 20 years.

8) Succession through the maternal line was recognized. That is to say, when there is no son, a daughter may continue the family line and, in such a case, if she marries, her husband is registered in her family register and their children take the mother’s family name and clan origin.

9) The right to inherit the family headship and property was granted to women as well as men.

These advances seemed tremendous in comparison with the former situation of women legally, but they were not enough. In June 1973 the Pan Women’s Committee for Promoting Revision of the Family Law was constituted by 61 women’s organizations to begin what developed into a four-and-a-half year struggle to effect another revision in the country’s laws. As one stage in that movement, a resolution of ten basic demands was submitted to the Korean National Assembly by the women legislators, with the result that in December 1977 some of the original requests for revision were approved. The revisions came into effect on January 1,1979,with the exception of one, which provided only for the suspension of a law for the calendar year 1978.

In order to provide an overall view of the situation of the Family Law at present, so that readers may make their own assessment of the current legal status of women, a list of the newly-revised provisions will be given here, followed by mention of those areas in which the Family Law remains discriminatory against women.

REVISIONS APPROVED DECEMBER 1977

1) Registration of the marriage of couples who have the same surname and the same place of family origin will be permitted for a one-year period. This will legitimize children born to such couples and will permit such legal marriages from January 1 - December 31, 1978.

2) Anyone twenty years old or over may get married without parental permission.

3) Anyone who is married, even though he/she be a minor in [page 44]

age (under 20), will be considered an adult.

4) Any property of a married couple that does not clearly belong to one partner or the other will be considered the common property of that couple.

5) Divorce by agreement will take effect upon confirmation by the Family Court.

6) Both parents are entitled to exercise authority over their children.

7) Inheritance will be given equally to the first son and the mother, with the other sons and daughters dividing the remainder equally. A married daughter continues to receive one-half of an unmarried child’s portion.

8) If the head of the family dies leaving property to persons other than his family and nothing to them, they will nevertheless become entitled to a portion.

REJECTED REQUESTS FOR REVISION

1) The boundary of relatives should be the same for both husband’s and wife’s family, namely that all with four degrees of blood ties should be considered relatives. (At present it is eight degrees for the husband and one for the wife. Therefore, all blood relatives of the husband are considered blood relatives of the wife, but the husband assumes only his parents-in-law as blood relatives).

2) The system of prohibition of marriage between persons of the same name and same place of family origin should be abolished.

3) In cases of divorce, either partner should have the right to petition for division of their common property. In addition, recognition should be given to the value of the wife’s work in the household as contributing to common investments.

4) Rectification should be made of the present system whereby a legal wife must accept an illegitimate child officially as her own, and a stepmother must accept a child of her husband’s former wife as her own. (This is carried out at present without regard to the desires of the mother, but should be changed to provide for the wishes of the mother/ child in each situation.) [page 45]

5) Rectification should be made of the present practice of having an adopted child keep his original name. The adopted child should be given the adopted father’s or mother’s name; for adoption of a minor, approval must be received from the Family Court.

6) Abolition of the system of the head of the family. (At present, males have priority in succession of family head-ship, decide the place of residence, and are in charge of supporting family members.)

By way of conclusion to this necessarily sketchy overview of three inter-related and important areas impacting on the situation of women in Korea today, it is important to underline the fact that the work is not all done. Women must join together to bring about changes in the laws that affect their lives, and they must further the consciousness-raising movement in order to educate all citizens, both women and men, about justice before the law. As part of such a campaign, the Korea Legal Aid Center for Family Relations publishes a newsletter and books, holds lectures, and uses every oportunity through the mass media to contact as many as possible of Korea’s nearly 10 million households.

It is likewise incumbent upon those of us who are non-Koreans to know about the situation of families in Korea. A growing number of international cases are coming to the attention of the counselors at the center. Likewise, since women’s issues have worldwide dimensions of commonality, none of us can afford to be ignorant of them.

In response to my question about what should be the most important closing thought for this paper, Dr. Lee said, “Watch us, and keep and eye on the women of Korea! We’re way ahead of the men.”