

The Improvement of Women's Legal Status in Korea

— The Recent Revisions of the Korean Family Law —

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목 차

I. Introduction	1. Background
II. The Abolition of the House Head System	2. The Decision of Constitutional Court of Korea in 1997
1. Background	3. The Meaning of the Decision and Aftermath of the Decision
2. The Decision of Constitutional Court of Korea in 2005	4. The Revision of the Family Law in 2005
3. The Ideal of the Family Policy and Aftermath of the Decision	V. Period of Prohibition to Remarriage & Eligible Age for Marriage
III. The Alteration in the Scope of Family and the Changeability of the Surname and Family Origin	1. The Period of Prohibition to Remarriage
1. The Scope of the Family	2. Eligible Age for Marriage
2. The Changeability of the Surname and Family Origin	VI. Conclusion
IV. The Abolishment of Prohibition Provisions of Marriage between Parties with the Same Clan and the Same Surname	

I. Introduction

Although Confucianism originated in China, it may be argued that Koreans are now the most typically Confucian people in the world. Confucianism,

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primarily a moral teaching in China, has been virtually transformed into a religion in Korea.¹⁾ A patriarchal family system strongly influenced by Chinese Confucianism and very paternal and male-lineage oriented.

The Korean Family Law²⁾ is a legacy of Korea's own version of Confucianism, founded on the tradition of male ancestor worship. So to speak, Korean Family Law is based on the clan system, a patriarchal family system strongly influenced by Chinese Confucianism and very paternal and male-lineage oriented. Under these influences, there has been a "House Head" system(Headship system) and prohibition provisions of marriage between blood relatives of the same clan and the same surname in Family Law from the beginning of the first enactment of the Civil Code in Korea.³⁾

The Korean Civil Code has been in force since January 1, 1960., but it has been revised only twice in the field of Family Law until 1990. Feminist and family law academics have long argued for the abolition of the house head system, but the revision of the Family law in 1990 failed to abolish the house head system, even though its patriarchal character was moderated considerably.⁴⁾

However, Family law in Korea reached a significant turning point recently,

1) Chong-ko Choi, *Confucianism and Law in Korea* (Beophak, volume 37, p 115, published in 1981).

2) Korean Civil Code is divided into five books. Following the German Civil Law model, the first three books deal with general provisions, property rights and obligations in general. The issues of family and successions are covered by the fourth and fifth books in Civil Code, which are referred as "Family Law" hereafter.

3) Article 778 of Old Family Law states "A person who has succeeded to the family lineage or has set up a branch family, or who has established a new family or has restored a family for any other reason, shall become the head of a family," and Article 809 (1) of the Old Family Law prohibits marriage between two persons who have the same family name and come from the same ancestral line.

4) It lessened the burden of eldest sons.

when, after an intensive debate and following the decision of the Constitutional Court of Korea, the Korean Family Law was revised in 2005 and 2007.⁵⁾ The Revision of the Family law in 2005⁶⁾ abolished the entire house head system as well as the prohibition provisions of marriage between blood relatives of the same clan and the same surname. It is a “revolution” in the field of Family Law and is the result of the Family Law Amendment Movement by the women.

This paper will briefly review the recent revisions of the Korean Family Law in relation to the improvement in the legal status of women.

II. The Abolition of the House Head System

1. Background

Confucian customs and attitudes affect the Korean social and legal culture and the outstanding example of that custom is the house head system. Under the basis of the house head system, Korean society has kept male dominance as a norm, which has the foundation in Confucianism. Such as marriage, parents-son relationships, parental authority determined by male dominance are all related to the house head system.

A family consists of a “head of the family” and “members” of that family. There can only be one head of a family, and as a general rule, he could be succeeded by “a male person who is a lineal descendant of the inheritee”⁷⁾,

5) The recent revision of the civil code was made on 2007. 12. 22.(Law No. 8720).

6) Revised on 2005. 3. 31. Law No. 7427, which are referred as “2005 Revision of the Family Law.”

and if there is someone with difference in the degree of kinship, meaning between son and grandson, the son is given priority.⁸⁾ In the succession of the house head, the conception of the first son is kept thoroughly. Females can only be a house head in a certain circumstances that there is no male lineal descendant of the inheritee(if there is no male to inherit the household, the daughter is to inherit, and if there is no daughter, the wife is to inherit). Discriminating men and women, the traditional Confucianism demanded absolute obedience from women. In the meaning that family members have to obey the head of the family, the succession order of the house head system itself shows the male dominance in Korea.

The house head system was accompanied by the patrilineal family register, which is the recording of 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.⁹⁾ The family register is the source for identification cards, passports, and official documents. 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.¹⁰⁾ The family register is not

7) Old Family Law(which had been applied before 2005 Revision of the Family Law) Article 984.

8) Old Family Law(which had been applied before 2005 Revision of the Family Law) Article 985-1, Front Section.

9) Rosa Kim, "THE LEGACY OF INSTITUTIONALIZED GENDER INEQUALITY IN SOUTH KOREA: THE FAMILY LAW", p. 149, Boston College Third World Law Journal, Winter, 1994(FN 24, John McBeth, A Family Feud for Confucians and Women, Far E.Econ.Rev., Feb. 26, 1987, at 38-41).

10) Id, p. 149(FN 25, 26, David I. Steinberg, The Republic of Korea : Economic Transformation and Social Change 75 , 1989. note 20, at 74. 75).

only a legal document used for identification, but also regarded as a clan register that shows the family lineage. The family register system forces a wife to abandon her own family register and join that of her husband's when she marries(When a daughter gets married, she is removed from her father's family register and transferred to her husband's.) Children born of the marriage are automatically registered under the father's family register. Even when a couple divorces and the mother retains custody of children, the children keep the father's surname and remain in his family register unless he gives permission to transfer.

Feminist and family law academics have long argued for the abolition of the house head system, because it conflicts with the principles of democracy and the equality of sexes. However, the stubborn Confucians expressed their opposing opinions to the abolishment of the house head system. Korean society has been based on Confucian doctrine for about 500 years. This doctrine organized the structure of society according to a system of obedience, in which women must be obedient to men (the daughter to her father, the wife to her husband, the mother to her son). Therefore, it was impossible to persuade stubborn Confucians, and the 1990 revision of the Family Law were unable to abolish completely the head of the family system. However, the struggle to reform the legal system continued. Women's rights advocates in Korea have been working to raise the consciousness levels of women on political and social issues and law academics have continuously indicated the problem of the house head system which hinders the establishment of the equality between men and women.

2. The Decision of Constitutional Court of Korea in 2005

On February 3, 2005, The Constitutional Court of Korea¹¹⁾ made the monumental decision about the case on the house head system.¹²⁾ As a response to the petitioners, requesting the constitutional review asserting that the provisions of the Civil Code regarding the house head system are unconstitutional, the Constitutional Court issued a decision of constitutional nonconformity with a six-to-three-vote (one opinion concurring in the dissenting opinion). The provisions under review was Civil Code (Family Law Section) Article 778,¹³⁾ latter part of the main paragraph of Article 781(1),¹⁴⁾ and Article 826 (3).¹⁵⁾

The first point that the Constitutional Court focused was whether the house head system comply with the ban of discrimination between men and women without justifiable ground. Constitutional Court held that “The house head system is discrimination based on stereotypes concerning sexual roles. This system, without justifiable grounds, discriminates men and women in determining the succession order to house head, forming marital relations, and forming relations with children. Due to this system, many families are suffering inconvenience and pain in many ways since they cannot form a legal family relationship appropriate to family life in reality and the welfare of the family. Traditional ideology or public morals such as ancestor worship, respect for the aged

11) Which is established on September 1, 1988

12) 17-1 Korean Constitutional Court Report 1, 2001Hun-Ga9,10,11,12,13,14,15 and 2004Hun-Ga5(consolidated), February 3, 2005.

13) “A person who has succeeded to the family lineage or has set up a branch family, or who has established a new family or has restored a family for any other reason, shall become the head of a family.”

14) “entered into his or her father’s family register.”

15) “The wife shall have her name entered in her husband’s family register.”

and obedience to parents, and harmony in family can be passed down and developed through cultural and ethical aspects, but cannot justify the blatant sexual discrimination of the house head system.”¹⁶⁾

The second ground that the Constitutional Court found that the house head system is unconstitutional is that the house head system is against the right of autonomous decisions of individuals and families. “The house head system one-sidedly prescribes and demands a certain family system deeply rooted in the ideal of maintaining and expanding a family centered on male lineage regardless of the intention or welfare of the people concerned. It does not respect individuals inside a family as individuals with dignity but rather treats them as a means to succeeding a family. Such attitude does not comply with Article 36(1)¹⁷⁾ of the Constitution that demands respect for the right of autonomous decisions of individuals and families in deciding how to manage marriage and family life.”¹⁸⁾

The third was focused on the change of social environment and family relations. “The relationship inside a family, these days, is no longer an authoritarian one, in which a family is divided into a house head and the followers who obey the house head. It is changing into a democratic relationship where all family members are equally respected as individuals with dignity regardless of sex. As the society is becoming specialized the form of families have become very diverse including families with single mothers, remarried couples and their children from the previous marriage, etc. Also, due to the increased

16) DECISIONS OF THE KOREAN CONSTITUTIONAL COURT(2005), The Constitutional Court of Korea, 2007, p. 101.

17) “Marriage and family life shall be entered into and sustained on the basis of individual dignity and equality of the sexes, and the State shall do everything in its power to achieve that goal.”

18) *Id.* pp. 101.

economic power of women and the increased number of divorces, the rate of women filling the role of a house head is also on the rise. Even if the house head system is related to the past family system based on the principle of lineage, as can be seen above, the foundation of the principle's existence has now collapsed and the system no longer can be harmonized with the changed social environment and family relations. Therefore, there is no need for the house head system to be retained.”¹⁹⁾

Finally, Constitutional Court concluded that the house head system, along with the provisions under review — Civil Code Family Law Section Article 778, latter part of the main paragraph of Article 781(1), and Article 826 (3) — is unconstitutional because it does not comply with the the Article 36 (1) of the Constitution. “If the provisions on review, the framework of the house head system, are found constitutional, the system cannot be retained. As a result, the current Family Register Act, which prescribes that each family in the Family Register be compiled according to each house head, cannot be enforced the way it is. However, if the Family Register Act is not enforced at all, there will be a vacuum in the public records used for notice and verifying the relations among people. Therefore, we pronounce a decision of constitutional nonconformity in order to temporarily enforce the provisions on review until the Family Register Act is amended with a new family register system not premised on the house head system.”²⁰⁾

3. The Ideal of the Family Policy and Aftermath of the Decision

The ideal of the family policy is comprised of the monogamy and “husband

19) Id., pp. 101, 102.

20) Id., p. 102.

and wife - centered" family life, and they should be based on the individual dignity and equality of the sexes as the Article 36(1) of the Constitution declares. So to speak, the Constitution negates the polygamy or patriarchal system. In light of this ideal and foundations, the house head system apparently does not consist with this ideal of the family policy.

Furthermore, the house head system substantially limits the legal power of women within the family structure. It also does not comply with the equality of sexes which Article 9 of the Constitution("All citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status.") guarantees. The family register system which forces a woman to abandon her own family and join her husband's family is based on the house head system, and is also unconstitutional.

According to this decision of the Constitutional Court, on March 31, 2005, the Korean national assembly passed revision of the family law which included the family system repeal. Article 778, the latter part of the main paragraph of Article 781(1) and the main paragraph of Article 826(3), which was declared nonconforming to the constitution have been repealed in that amendment. This was undoubtedly the most important reform of family law system, because the abolishment of family register system is a significant step toward women's equality in Korean society. many women's organizations have made tremendous efforts to abolish this biased law over years and finally they have made a historical change.

The family register system was also discarded and was substituted by the identity register system which focuses on the individual himself.²¹⁾ Under

21) According to that new system, the Civil Code was also revised on 2007. 5. 17 (Law No. 8435).

the new system, every family member will be registered under his or her own new individual record book, which will contain information on the person's birth, death, marriage and adoption, along with basic information on his or her spouse, parents and children.

III. The Alteration in the Scope of Family and the Changeability of the Surname and Family Origin

1. The Scope of the Family

Before the 2005 Revision of the Family Law, the scope of family was defined as “spouse of the house head, blood relatives, the spouse of blood relatives and people who entered the family register following this code.”²²⁾ As the house head system abolished, the scope of the family also had to be changed. The 2005 Revision of the Family Law defines the scope of the family as “1. Spouse, lineal blood relatives, and brothers & sisters., 2. Spouse of the lineal blood relatives, lineal blood relatives of the spouse, and the brothers & sisters of the spouse.”(The section 2 is limited to the people who live together.)

Before 2005 Revision of the Family Law, women who get married are not a legal family member any more. because she are crossed out in the family register document. However, under the new system, women are a family member regardless of their marriage status as men are. When they get married, they change marriage status on their own individual registration

22) Old Family Law(which had been applied before 2005 Revision of the Family Law) Article 779.

document as men do.

According to the 2005 Revision of the Family Law, the scope of the family expanded, but there is a criticism that this change of the family scope could not be compatible with the Korean's traditional emotions to some extent in light of the fact that if son-in-law or daughter-in-law does not live together, then he or she will be excluded from the meaning of family.

2. The Changeability of the Surname and Family Origin

Children born of the marriage are automatically given the surname of their father, and the surname and family origin could not be change. However, the 2005 Revision of the Family Law opened the way of choosing mother's surname and family origin. The new registration system will allow offspring to use the name of the mother with the mutual agreement of both parents at the time of marriage registration.²³⁾

Furthermore, the 2005 Revision of the Family Law opened the way of changing offspring's surname and origin.²⁴⁾ The new registration system will enable a child to change his or her surname in accordance with the stepfather and with court permission, even without agreement from the biological father.

Before the revision, when a women gets married again with her child from her previous marriage, her child cannot have her husband's family name. Her child must keep her ex-husband's family name, thus generating a family that has three different family names,— a wife's, a wife's husband and the wife's child's from her ex-husband. This used to make the child difficult to adapt to the new family. However, under the new system, the child can

23) Family Law 781 (1).

24) Family Law 781 (6).

change his or her surname in accordance with the stepfather. This will enhance the child's sense of solidarity and stability.

IV. The Abolishment of Prohibition Provisions of Marriage between Parties with the Same Clan and the Same Surname

1. Background

The character and the content of the marriage in Korean Family Law are influenced by the patriarchal family system. One of the effects of this tradition is embedded in the rule prohibiting marriage between parties whose surname and whose ancestral paternal origin are common (parties with the same clan and the same surname). Article 809 (1) of Old Family Law²⁵⁾ prohibits marriage between two persons who have the same family name and come from the same ancestral line and if such marriage does take place, it can be annulled. (Article 816) Moreover, the family register provided the basis for determining the legitimacy of marriages between parties with a common surname or origin of ancestry.

The law is based on the cultural logic that all the paternal relatives descending from the same progenitor, however large in number or remote in relationship, form a unit of exogamy. However, many people in Korea have same surname

25) Which had been applied before 2005 Revision of the Family Law. Article 809 provides:

(1) A marriage may not be allowed between the blood relatives, if both surname and the origin of which 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.

and origin of clan. These people are presumed by the law to be descendants of one male ancestor, so they could not marry.

During the course of establishing the Civil Code there were a lot of disputes over this area of law. Also, this provision has been the subject of dispute between the Confucian adherents who emphasize its unity with the national tradition and the women's groups who demand its revision or abolition on the ground that it is not only too broad a prohibition on marriage without any genetic evidence but also a relic of patriarchy and male supremacy. Furthermore, the banning of the marriage only regards the male lineage as the important factor, so the woman's organization had struggled for the abolition of this provision.

2. The Decision of Constitutional Court of Korea in 1997

On July 16, 1997, The Constitutional Court of Korea declared the law violates the Constitution (in the form of decision of nonconformity) for the following reasons.²⁶⁾

“Firstly, the modern society is a free democratic society that is based on the fundamental ideas of freedom and equality and opposes sexism and any form of caste or class. Accordingly, Article 36 (1) of the Constitution not only mandates that establishment and maintenance of marriage and family life be based on gender equality and individual dignity but even provides for the state's responsibility to guarantee fulfillment of the mandate.

Secondly, the prevailing view of marriage changed from that of union between two families to that of union between two individuals whose free

26) 9-2 Korean Constitutional Court Report 1, 95 HunKa 6, etc., Jul. 16, 1997.

wills should be respected in the process. The prevailing idea and form of family also changed from that of an extended family based on patriarchy to that of a nuclear family. The idea of gender equality has also become widely accepted due to the expanding education of women since the founding of the country.

Thirdly, the self-sustaining agrarian society or the feudal and isolated rural-centered society has transformed itself into a highly advanced industrial society. With astronomical growth of the population, the numbers of those with the major family names such as Kim from Kimhae, Lee from Chunju, Park from Milyang were 3,892,342, 2,379,537 and 2,704,819, respectively according to the 1985 figures, making surnames and origins difficult to accept as rational standards of a marriage ban. The growing urbanization of the population is diluting such concept as a house or a lineal origin (bon-gwan).

Based on such an evaluation, Article 809 (1) of the Civil Act loses its social acceptability or rationality as a marriage ban and is in direct conflict with the principle of sexual self-determination, especially, the constitutional ideas and provision (Article 10)²⁷⁾ on human dignity and worth and the right to pursue happiness, which is the basis of the right to choose one's destiny including freedom of marriage and freedom to choose one's partner in marriage. It also directly conflicts with the constitutional provision calling for establishment and maintenance of marriage and family life on the basis of individual dignity and gender equality. In addition, since the scope of prohibition is limited to the same surnames, in other words, those with the same patrilineal blood ties, it is gender discrimination. Since there is no rational ground to

27) "All citizens shall be assured of human dignity and worth and have the right to pursue happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals."

justify such discrimination, it also violates the constitutional principle of equality (Article 11).²⁸⁾ And since its legislative purpose no longer qualifies as public welfare or social order that justifies limitation on people's rights and freedom, it also violates Article 37 (2)²⁹⁾.”³⁰⁾

Finally, the Constitutional Court held that Article 809 (1) of the Civil Code was incompatible with the Constitution, and that if the National Assembly did not amend it by December 31, 1998, it would become null and void, starting on January 1, 1999. Until the National Assembly amended the Marriage Prohibition Clause, other courts and government agencies, including local governments, should not apply the Clause.

3. The Meaning of the Decision and Aftermath of the Decision

The prohibition of the marriage between blood relatives of the same clan and the same surname was merely a feudalistic vestige which originates from Chinese Confucianism in the Chosun Dynasty period and not from traditional Korean custom. Because of the Article 809, many men and women sharing the same partilineage remain only in de facto marriages and could not legally protected as husband and wife, so there has been a need to relieve them.

28) Article 11 of the Korean Constitution provides;

(1) “All citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status.”

(2) “No privileged caste shall be recognized or ever established in any form.”

(3) “The awarding of decorations or distinctions of honor in any form shall be effective only for recipients, and no privileges shall ensue therefrom.”

29) “The freedoms and rights of citizens may be restricted by Act only when necessary for national security, the maintenance of law and order or for public welfare. Even when such restriction is imposed, no essential aspect of the freedom or right shall be violated.”

30) THE FIRST TEN YEARS OF THE KOREAN CONSTITUTIONAL COURT, The Constitutional Court of Korea, 2001. pp 243, 244

Furthermore, the children born of such marriages were treated as born out of wedlock in legal meaning and were discriminated against in matters of inheritance and property rights.

From this point of view, the common surname marriage ban had been temporarily lifted by special acts three times, each for a period of one year, in 1977,³¹⁾ 1987,³²⁾ and 1995.³³⁾ This act reflected the public and media's general agreement that the law is devoid of scientific reasoning. This act also reflected that this provision was de facto "dead letter".

To repeal this provision, a nation-wide campaign was conducted by feminist and family law academics, and finally the Constitutional Court responded to their voice and declared that the banning of the marriage between blood relatives of the same clan and the same surname was incompatible with the Constitution.

With this decision, many Korean couples are now able to legalize their marriages. While Confucianists have angrily announced that the purity of the Korean race has been destroyed, women's leaders view the decision as a tremendous victory over uncompromising custom and tradition.

The couples were able to register their marriage right after the decision, and their children were freed from the shackle of being children out of wedlock. The spouse and the children of that couple now can enjoy the benefits such as medical insurance, family allowances and tax exemptions, etc., which was unavailable previously.

However, the amendment to the family law was faced of fierce opposition from Confucian group, so despite the 31 December 1998 deadline imposed

31) December 31. 1977, Act No. 3052.

32) November 28. 1987, Act No. 3971.

33) December 6. 1995, Act No. 5013.

by the Constitutional Court, the amendment of repealing the article 809(1) could not realized until 2005.

4. The Revision of the Family Law in 2005

The 2005 Revision of the Family Law included a reformed version of Article 809 which provides that “(1) Marriage may not be allowed between parties whose relationship of blood relative exists within the eighth degree (including the blood relatives for the real-adopted child kept before real-adoption). (2) Marriage may not be allowed between parties if either of them is or was the spouse of blood relative within the sixth degree of relationship, or if either of them is or was the blood relatives within sixth degree of relationship of the spouse, or if either of them is or was the spouse of blood relatives by affinity within fourth degree of relationship of the spouse. (3) Marriage may not be allowed between parties whose relationship of blood relative existed within the sixth degree of adoptive parents lineage and within the fourth degree of adoptive parents affinity.”

The 2005 Revision of the Family Law finally abolish the prohibition provisions of marriage between parties with the same clan and the same surname, and converted it into “The ban of marriage between close relations.”

There is a criticism that new article 809(1) enlarge the range of the female line relatives who cannot marry each other comparing to the old article 809(2). There also can be a criticism concerning that “On what grounds the banning degree, within which the relationship of blood relative exists, was determined?”

However, it should be welcomed that the provision, which prohibits the marriage merely because the parties has the same clan and the same surname, was repealed.

V. Period of Prohibition to Remarriage & Eligible Age for Marriage

1. The Period of Prohibition to Remarriage

The Old Family Law³⁴⁾ article 811 provided that “A female may not remarry unless six months have elapsed from the day of the termination of her previous marriage: However, if she gives birth after the termination of her previous matrimonial relation, this shall not apply.” This was devised to avoid the conflict of the paternity and this restriction served to ensure that children born of a marriage are properly registered according to the biological father’s identity.

Even if men have no restriction, only women have to wait 6 months to remarry. Therefore, this provision was regarded as a discrimination against women by virtue of their reproductive capability and substantial restriction to their freedom of making personal decision about remarriage and had long been criticized by women’s group. At present the technical development had made it easier to discern the paternity, so this provision that requests only divorced women to wait 6 months lost its justification.

The 2005 Revision of the Family Law repealed this provision, thus establishing the sexual equality between men and women.

2. Eligible Age for Marriage

The old Family Law³⁵⁾ Article 801(Eligible Age for Matrimonial Engagement) provided that “A male who has attained full eighteen years of age and a female who has attained full sixteen years of age may enter

34) which had been applied before 2005 Revision of the Family Law.

35) This had been applied until 2007. 12. 22(The revision date of the current Family Law).

into a matrimonial engagement upon the consent of his or her parents or guardian. The Provisions of Article 808 shall apply *mutatis mutandis* to this case”, and the article 807 (Marriageable Age) provided that “A man who has completed his full eighteen years of age, and a woman who has completed her full sixteen years of age, may enter into matrimony.”

There has been a criticism that these provisions (eligible age for matrimonial engagement or marriage) irrationally discriminate between men and women. These provisions are also not compatible with the Constitution which declares that the marriage and family life should be entered into and sustained on the basis of individual dignity and equality of the sexes.³⁶⁾

On December 21st 2007, the new revision of the Family Law³⁷⁾ which has the same eligible age for marriage between men and women was announced and in effect now. The new article 801 of the law provides that “A person who has attained full eighteen years of age may enter into a matrimonial engagement upon the consent of his or her parents or guardian. The Provisions of Article 808 shall apply *mutatis mutandis* to this case,” and the new article 807 provides that “A person who has completed full eighteen years of age may enter into matrimony.”

VI. Conclusion

As stated above, the Korea society has faced the monumental event in the Family Law system. Korean Family law a significant turning point in 2005 and 2007, when the Korean Family Law abolished the entire house

36) Korean Constitution article 36(1).

37) Law Number 8720 (the current Family Law).

head system as well as the prohibition provisions of marriage between blood relatives of the same clan and the same surname.

As the Family Law was amended on January 13, 1990, the Family Law amendment movement was thought to be a success by some, but a number of people pointed out that it still has certain principles discriminating against the equality of the sexes. This is because the house head system and the provision to prohibit the marriage within the same clan and surname still exist in spite of that amendment. That revision could not alter the foundation of the family law because it couldn't repeal the discriminating provisions, which is the result of the stubborn resistance of the Confucians.

However, revision of family law in 2005 abolished that discriminating provisions and also changed the scope of a family. Furthermore, the 2005 revision of family law has adopted the changeability of the Surname and Family Origin. Recently, the 2007 revision of the family law provides the same eligible age for marriage between men and women. These were undoubtedly the most important reform of the family system, and these results are all up to the feminist and family law academics who have long been struggling for the abolishment of the 'ancient regime'.

It can be said that the Korean Family Law fundamentally changed due to those revisions, and also can be said that the equality of the sexes was considerably realized in the family law system.

(투고일 2008년 7월 15일, 심사일 2008년 7월 23일, 게재확정일 2008년 8월 1일)

Key Words : Family Law, revision, house head system, prohibition provisions, eligible age, marriage, blood relatives, the same clan, the same surname, family Origin, equality of the sexes, confucianism

[국문초록]

한국 여성에 대한 법적 지위의 신장

— 한국 가족법의 최근 개정을 중심으로 —

이 재 경*

우리는 조선시대 이후 오랫동안 유교의 교리에 맞추어 가족 제도를 이루어나가고 있었으며, 건국 이후에도 유교의 영향 하에서 친족, 상속법과 그 일련의 제도를 유지해왔다. 몇 백 년의 전통은 우리의 고유 풍속으로서의 의미도 가지고 있었지만, 한편 현대 사회에서 강조될 수밖에 없는 가치인 양성 평등에 정면으로 위배되는 측면이 있었다. 오랜 세월이 흐르는 동안, 유림으로 대표되는 유교적인 입장과 양성 평등을 외치는 개혁파의 대립은 별다른 해결책을 찾지 못한 채, 점진적인 절충안에 그치곤 했었다.

그러한 와중에, 대한민국의 사회제도 및 가족문화는 2005년과 2007년에 걸쳐 이루어진 가족법의 개정으로 인하여 획기적인 변화를 맞이하게 된다. 호주제도의 전면적 폐지와 함께 동성동본의 금지 규정을 철폐함으로써 유교사회의 구습을 떨쳐버림과 동시에 양성평등을 향하게 한걸음 더 나아가게 된다. 이러한 움직임들은 1990년대 초반부터 부단하게 이루어진 우리나라 가족법 개정 역사에 가장 실질적인 의미를 부여하는 개정 조항들이며, 21세기를 맞이하여 우리가 한걸음 더 현대사회의 평등에 다가서는 계기를 마련했음을 적시하고 있다. 2000년대를 접어드는 시점에서도 우리나라의 가족법은 양성 평등의 측면에 있어, 유교의 전통

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을 완전히 버리지 못하고 있었는데, 2005년 개정안의 차별금지 조항의 삭제 및 성(姓)의 변경, 그리고 2007년 개정안의 양성간의 결혼가능 연령의 동일화 등으로 질적으로 선진화를 이루게 되었다. 이는 수십년 동안 평등 및 구습 타파를 위하여 노력해온 여성운동가 및 친족법학자의 부단한 노력의 산물이며, 이제 양성간의 실질적인 평등은 우리나라 가족제도에서 실현되었다고 평가될 수 있는 것이다. 본 논문에서는 2005년 및 2007년에 이루어진 가족법 개정의 자세한 내용 및 각 조항별 연혁에 대하여, 우리나라 사회 문화 저변에 깔려있는 유교 및 그에 대한 반작용과 연결시켜 입체적으로 살펴봄으로써 우리나라 가족제도에서 실현되는 진정한 평등의 의미를 고찰하고자 한다.

주제어 : 친족법, 2005년 개정, 2007년 개정, 호주제, 동성동본, 금지, 차별, 양성 평등