

《論 說》

Child Abuse in Japan
— The Current Situation and Proposed
Legal Changes

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PREFACE

There is a movie called 'Kichiku (Brute)' directed by Yoshitaro Nomura, based on a book by Seicho Matsumoto, one of Japan's most well-known authors¹⁾. In it, a childless couple were forced to take care of three children, who were the results of the husband's extramarital affair. The stepmother treats the children cruelly, and their cowardly father obeys without resistance her order to dispose of them. The stepmother kills the youngest child, aged around two, and disguises it as an accidental death. The second child, a four-year-old girl, was taken to a city and abandoned in a crowd by her father. The eldest, a boy of about seven years old, is astute enough to spit out a poisoned cake given to him by his father and he cannot be abandoned because he is old enough to give his name and address. At a loss, his father pushes the boy over the edge of a cliff overlooking the sea. However, the boy is caught by a tree halfway down the cliff and is helped by a fisherman. Asked by the police who pushed him, the boy will not say the criminal's name. He covers up for the father who tried to kill him but his belongings provide a clue to his identity and his father is arrested. When the police ask if this man is his father, he cries, "No, I don't know this man. This is not my father". In this last scene, the grudge against the father who tried to kill him and the feelings that prompted him to cover up for his father, are intertwined. A problem which we now need to face up to, and which we will need to continue to face up to, lies in this last scene. Although it is simply called 'child abuse', abuse of children by parents is a serious problem that involves the complex mutual affection between parent and child. The issue of child abuse provokes public debate over the ideal relationship between parent and child and society's involvement in the problem.

1) Seicho Matsumoto, *Kichiku (Brute)*, Shincho Bunko (1965) ; *Kichiku Shochiku Home Video* (1992).

1. INTRODUCTION

In June 1997, Japanese Child Welfare Law was drastically revised for the first time since its establishment in 1947. The Child Welfare Law, inserted in the legal system as a relating law of the Parent and Child Law (the Civil Code), originated from the Anti-Child Abuse Law enacted in 1933. The Anti-Child Abuse Law was written to protect children from the whims of parents who in pre-war days had absolute control over children and who could force their children to beg, or sell them to show-tents, or brothels. Absorbing this Anti-Child Abuse Law, the Child Welfare Law was established in 1947 to protect the lives of the many war orphans who were robbed by the war of parents and a place to live and were thrown out, hungry, into the streets. However, in the 50 years since the end of World War II, the environment surrounding children and families has changed remarkably. The birth-rate has sharply decreased and the number of families with working parents has increased. As a result the role of families and communities in bringing up children has deteriorated. Under such circumstances, the law was revised to re-establish the welfare system for children and families, which constitutes the environmental conditions required for easy childcare and supports the sound growth and independence of children. However, as far as abuse is concerned, it cannot be said that the revised law solves all aspects of the problem, and there are still a lot of issues that need to be resolved.

In Japan, the Child Welfare Law has a direct and dominant role and Child Guidance Centres and other facilities occupy a central position in the welfare of children. Starting with an overview of the current state of child abuse and the surrounding issues in Japan, this article mainly describes the

treatment of abused children under the Child Welfare Law. However, those who are directly involved in child abuse are the parents, siblings, and other family members. Accordingly, the problems of child abuse lie directly in family life, mainly that of the parents and children. Attention should also be given to the strains of modern-day family life. While focusing on the Child Welfare Law, this article will suggest future revisions and approaches to solving the problem of child abuse by looking at the parental rights under the Civil Code, provisions which prescribe the relationship between parent and child.

2. DEFINITION OF CHILD ABUSE

According to definitions widely accepted in Japan, child abuse is non-accidental abuse by parents, or guardians substituting for parents, of children (under the age of 18), which is divided into four categories: (1) physical abuse; (2) negligence or refusal of care; (3) sexual abuse; and (4) psychological or emotional abuse. This definition is based on child maltreatment at home by the International Child Abuse Permanent Committee.

However in practice child abuse can be defined in different ways and it is difficult to give it a fixed definition. Current Japanese laws do not have a provision that officially prescribes, "What is child abuse"? For example, decisions as to whether children should be placed under the temporary protection of a Child Guidance Centre, or whether children should be admitted to the facilities or entrusted to foster parents, or whether a family court should make a pronouncement of the loss of parental rights for child abusers, and decisions as to the presence or absence of 'abuse' and its degree are judged in the terms of individual cases and requirements. From

the standpoint of the principle of *nulla poena sine lege*, concrete and clear definitions are needed to punish assailants. However, when looking at the recovery of children's human rights, definitions that have some flexibility can be more desirable.

As illustrated by the fact that the right to discipline children is included in the provisions of the parental rights of the Civil Code²⁾, Japanese people tend to think that the training of children is the responsibility of parents and a personal family matter and one that should not be carried out by public authorities. However, there is no clear definition to differentiate between discipline and abuse. Furthermore, abusive parents are often not aware that they are abusing their children and have no intention to have consultations with public facilities. Abuse does include cases by assailants other than parents, such as the recent juvenile crime which shook Japanese society³⁾, the serial murders of little girls by a killer with abnormal

2) Article 822 of the Civil Code prescribes as follows:

"1. A person who exercises parental power can, in so far as it is necessary, personally chastise his or her child, or can, with the permission of the Family Court, place it in a disciplinary institution.

2. The period for which a child is to be placed in a disciplinary institution shall be determined by the Family Court within six month or less; however, such period may be shortened by the Family Court at any time on the application of the person who exercises parental power."

However, there exists no such "disciplinary institution" (the correctional institution of the past) so there are many people who consider that this article should be deleted since it is likely to be abused. Also, there are some tragic cases of some children dying after their parents left them in private correctional facilities. Examples are the cases of the yacht school in Nagoya and the keeping of children in containers in Hiroshima.

3) In May 1997, in Kobe, an incident occurred in which a 14-year-old boy killed an 11-year-old boy, cut his head off and left it in front of the gate of his junior high school. The incident shocked everyone. With this event as a catalyst, public opinion is calling as never before for a stricter revision of the current juvenile law. Crimes committed by juveniles below the age of 20 are only punished by probation and detention at a juvenile protection facilities under the present juvenile law. On the other hand, others oppose those that seek to solve problems by strengthening sanctions against juvenile crimes.

tendencies⁴⁾, and the suicide of a junior-high student distressed by bullying⁵⁾. However, this article concentrates on abuse by parents or guardians substituting for parents.

3. CURRENT SITUATION OF CHILD ABUSE

In many cases, child abuse happens behind closed doors and the victims are too young to report the fact to the outside world. Accordingly, it is difficult to get an accurate figure of the number of actual cases of child abuse. Figures shown in the statistics of public organisations represent only the tip of the iceberg. One view holds that Japan may have more than 10,000 cases of child abuse a year⁶⁾.

(A) A survey on report

A typical survey of child abuse was made by the Directors' Committee of National Child Guidance Centres. The first survey took six months, from

4) The serial murders of young girls committed by Tsutomu Miyazaki from the summer of 1988 to the summer of 1989 also shocked the public.

5) In the case of the 'Nakano Fujimi High School Bullying' (Judgement of Tokyo District Court on 27, March, 1992, *Hanrei Jiho* No. 1378: 26), the court denied the school's liability in proceedings brought by the mother of a 14-year-old school boy who had committed suicide because of bullying. After that, many suicides committed by school boys and girls took place owing to bullying at school. In view of this the essence of school education has been called into question, Japanese education is based on a results-oriented principle that could create psychological stress among children.

6) *Jido no Gyakutai ni tsuite-Wareware wa Nani wo Nasubekika (About Child Abuse-What we should do now?)*. CA Textbook No.5, Child Abuse Prevention Centre, (1992), P.1.

April to September of 1988, and the second one from April to September of 1996. The following is the result of the survey based on a report by the National Child Guidance Centres released in March 1997⁷⁾ : —

(1) Number of abused children

During the six months from April to September of 1996, 2,061 cases of child abuse were reported from 175 Child Guidance Centres nation-wide. Compared with 1,039 cases found by the 1988 survey, instances of child abuse have doubled in the last 10 years. While this increase is in part the result of the increase in the number of child abuse cases, it is also attributable to the recent recognition by society of child abuse. Each Child Guidance Centre reported an average of 12 cases, and the numbers reported by the centres ranged from 0 to 76. Calculating from the population figure for children from a national census, an average of 1.7 out of 10,000 children were abused.

(2) Categories of abuse

Of the total of 2,061 cases of abuse, 'physical abuse' occupies the largest share at 48.9%, followed by 'improper care or refusal of care' (40.4%), then 'psychological abuse' (5.9%) and finally 'sexual abuse' (4.9%). In the 1988 survey, 'improper care or refusal of care' (abandonment, neglect, refusal to allow school attendance and other such items) ranked top at 62.4%, while 'physical abuse' accounted for 26.5% of the total. In the recent survey

7) *Zenkoku Jido Sodansho ni okeru Kateinai Gyakutai Chosa Kekka Hokokushu (Report on Results of Investigation Concerning Child Abuse in the Household Conducted by the National Child Guidance Centres)*, compiled by the Executive Office of the National Society of Heads of Child Guidance Centres, *Zenjiso*, No.62, Separate Volume, (June 1997).

which has 'physical abuse' at the top of the list shows that the number of cases of aggressive abuse that threatens the lives of children has increased.

(3) Sex

In terms of the sex of those abused, 50.6% of abused children were boys, a slightly larger proportion than girls. When this is divided into each category of abuse, boys occupied 52.8% in terms of 'physical abuse' and 53.7% in 'improper care or rejection of care', while an outstanding 96.0% of victims of 'sexual abuse' were girls.

(4) Age

In terms of age, nearly 80% of victims are under the age of 12, with babies and infants between 0 to 5 years 41.5%, and elementary school-children of 6 to 11 years 36.4%.

Compared with the 1988 survey, the proportion of babies and infants being abused increased from 35.0%, and in particular, 45.3% of those receiving 'improper care and rejection of care' were babies.

(5) Period of abuse

In terms of duration, 'longer than 1 year and less than 3 years' ranked top at 27.8%, followed by 'longer than 3 years'; this indicates that abuse continues over a relatively long period of time. 'Sexual abuse' in particular tends to continue over a prolonged period.

(6) Abusers

Of the 1,626 cases, excluding those in which the identity of the abusers are uncertain, 'biological mothers' constituted 50.8% of the abusers, 'biological fathers' account for 28.5%, 'step fathers' 4.8%, 'adoptive fathers' 4.3%, and 'step mothers' 3.1%. As for 'physical abuse', 'biological fathers' occupied 38.5%, and 'biological mothers' 28.7% in the 1988 survey, while 'biological mothers' occupy 43.2% and 'biological fathers' 30.8% in the 1996 survey.

'Biological mothers' occupy a larger proportion than 'biological fathers' in all categories except 'sexual abuse'. Nearly half of the total of 'sexual abuse' cases are perpetrated by 'biological fathers', showing an increase from the previous figure of 41.7%. It should be noted that three cases of 'sexual abuse' by 'biological mothers' were reported.

(7) Age and job of abusers

Of the abusers, 37.9% were in their thirties; 30.3% were in their twenties; and 23.2% were in their forties, showing that younger parents occupy the largest proportion of the total. Of the young parents, only 29.8%, less than a third, had a fixed job, and more than half are 'unemployed', 'often changing jobs', or 'part-timers', which indicates that they were living in unstable economic conditions.

(8) Physical and mental status of abusers

Many abusers have physical or mental problems themselves. About 40% of the abusers had disordered personalities, 10.9% were 'alcoholics', 10.9% were 'neurotics or suspected neurotics', 9.9% were 'psychiatric patients or suspected psychiatric patients', 9.6% had 'personality disorders', and 8.9% had 'intellectual disorders'.

(9) How abusers inflict abuse

Of the abusers, 64.9% do not recognise that their acts are ones of abuse. On the other hand, it should be noted that some 40% of the 'psychological abusers' recognise that their acts constitute abuse and seek support.

(B) The recent trend of child abuse

The number of cases of child abuse has been increasing year by year⁸⁾, remarkably so in cities. One recent serious problem is that many mothers who take care of babies and infants all day long do so alone in an isolated family unit in the city without any support from their busy working husbands and they fall into infant-care neurosis which leads to child abuse⁹⁾. Some mothers start asserting that they do not love their own children. The myth of motherly love has started to lose its foundation. A 'chain of child abuse between generations' has also been identified. Those who were abused in childhood grow up to become parents who in turn abuse their children. One estimate is that 30% of those with a history of childhood abuse turn into parents who abuse their own children. The proportion of previously abused parents abusing their children is higher than

8) For example, according to a statistical report by the Ministry of Health and Welfare, the numbers of consultations conducted concerning child abuse in the whole country were: 1,101 for 1990; 1,171 for 1991; 1,372 for 1992; 1,611 for 1993; 1,961 for 1994; and 2,722 for 1995. However, the above statistics do not include abandoned babies, failure to protect children, and children being prevented from attending school.

9) *Kodomo Hakusho (White Paper on Children)*, compiled by the Association of Children Protection, Sodo Bunka, (1996), P.288.

that for non-abused parents¹⁰⁾. Under such circumstances, where there are many parents without a fixed job and where child abuse is recognised, even if the abused children are protected temporarily, they repeatedly become victims of child abuse when they return home. In reconsidering child abuse as a family problem, separating abused children from abusing parents is not the only solution, but also the economic stability of parents and mental treatment or re-education of parents may be necessary.

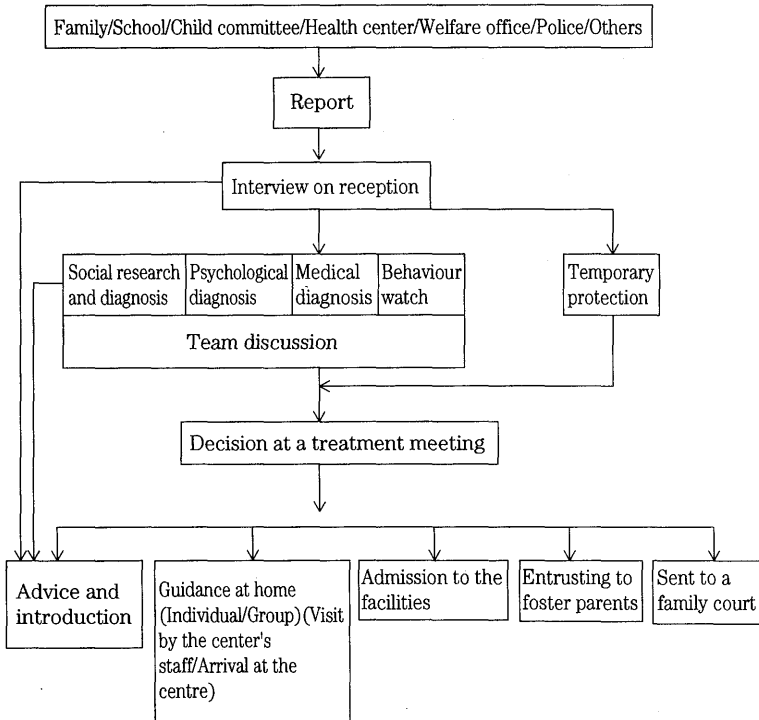
4. ADMINISTRATIVE HANDLING OF ABUSE UNDER THE CHILD WELFARE LAW

Japan does not have an Anti-Child Abuse Law, which systematically prescribes child abuse, or something like the British Children's Act that comprehensively describes the rights of children. In Japan each case is handled under the Child Welfare Law, the Civil Code and the Penal Code. Of these, the Child Welfare Law plays the central role, and provides the basic framework for the welfare of children. Here, I shall describe the structure of the Child Welfare Law and the role of the administrative system in providing remedies for child abuse.

(A) Child welfare facilities

Child welfare facilities function as child abuse relief facilities are medical facilities, public health centres, family and child counsellors' offices, and Child Guidance Centres. Of these, the Child Guidance Centres, under the supervision and control of the Welfare Ministry, play the leading role. The

10) *21 Seiki Oyako-Ho e (Parent-Child Law for 21st Century)*, by Shuhei Ninomiya and Fujiko Sakakibara, Yuhikaku (1996). P.146.



Child Guidance Centres, established by each prefecture and large city, act as central facilities active at the front line with a total 175 nation-wide as of April 1, 1996. The main functions of the centres include; (1) providing consultation to families and others on children's problems; (2) conducting necessary research into children and their families and making a professional judgement in terms of medicine, psychology, education, and psychological health; (3) providing guidance based on these judgements; and (4) giving children temporary protection as required. Each Child Guidance Centre has professional staff that consist of doctors, psychological decision makers, child welfare officers mainly engaged in casework, counsellors, child

guidance officers mainly involved in the temporary protection of children, and nurses.

(B) Process of the administrative treatment

The process of supporting cases at the Child Guidance Centres under the Child Welfare Law is as shown below.

Under the Child Welfare Law, the rescue of abused children starts with a report from guardians or finders to a Child Guidance Centre. According to the findings of the research by the Child Guidance Centre, a conference at the centre decides how to deal with an abused child. The measures include; (1) guidance at home; (2) emergency temporary protection; (3) admission to the facilities with the consent of parents; (4) admission to the facilities through Article 28 of the Child Welfare Law in cases where the parents do not consent to the admission; and (5) cases where the head of the Child Guidance Centre makes a claim for the removal of parental rights.

(1) Guidance at home

On receiving notice of a report of child abuse, the Child Guidance Centre sends a case worker to investigate the case and a psychological decision maker to interview the abused child to judge his or her physical and mental state. If it is not deemed an emergency case, the child is not separated from his or her family, and the family is given guidance on how to co-ordinate the relationship between the parents and the child. The Convention on the Rights of the Child also provides that children, “have the right to be cared by parents as far as possible”¹¹⁾ and that, “children shall

11) *The Convention on the Rights of the Child*, Article 7, Paragraph 1.

not be separated from their parents against their will¹²⁾. Accordingly, the ideal solution is to eliminate abuse with the child staying at home.

Since it is necessary to give guidance to guardians, the case worker, who supports abusing families, is required to make every effort to avoid a confrontation with them. However, since the guardians usually do not recognise the need for guidance, and as the case worker becomes involved with them through a report in most cases, special care is needed for an early approach to the family. Many of the families in which children are abused have difficulties, such as different types of stress, isolation from society, opposition to public organisations and a rejection of others. Accordingly, an ill-considered approach carries the strong possibility of provoking a reaction and can end with the opposite result to that required. The following points need to be taken into account by case workers when making their initial approach¹³⁾ :

- (i) quickly collect as much as information as possible on the family and child to understand the situation;
- (ii) determine from the child's damage and risk the degree of emergency;
- (iii) in the event of an extreme emergency, give priority to separation and protection, such as temporary protection and admission to hospital, and take appropriate measures (Some cases may require police involvement);
- (iv) consult with related organisations and, if required, get them to make a quick judgement;

12) *The Convention on the Rights of the Child*, Article 9, Paragraph 1.

13) *Kodomo no Gyakutai Boshi (Prevention of Child Abuse)*, compiled by the Study Society of Child Abuse Prevention System, Toki Shobo, (1993), P.35.

- (v) maintain a position of helping the parents to solve their problems and avoid reprimanding or criticising;
- (vi) if medical treatment is necessary, give it first priority. For later approaches, gather evidence (medical certificates and photos); and
- (vii) be flexible in approaching each case according to the parents' values and behaviour patterns.

Some cases may require a Child Guidance Centre to cooperate with a public health centre and a welfare office. For example, a health worker may visit the family to give guidance on childcare and living. If the family has financial problems the welfare office will take measures to provide social security. If the mother is a childcare neurotic, the child may require day care at a nursery school or kindergarten, or the mother may require a guidance treatment outside the home. Support from relatives such as grandmothers and grandfathers and support from the community will also be necessary to prevent isolation.

In Japan, it is a basic policy of the Child Guidance Centre to give guidance at home, and it is considered that the separation of a child from his or her parents should be avoided as much as possible. Article 44-2 of the revised Child Welfare Law provides that a 'Child and Family Support Centre' be attached to welfare offices as part of the child welfare facilities. This provision allows the head of a child Guidance Centre to entrust guidance of children and their parents to the welfare office staff (Item 2, Clause 1, Article 26 and Item 2, Clause 1, Article 27 of the Child Welfare Law), and allows the centre to make a comprehensive co-ordination with Child Guidance Centres and other child welfare facilities. It is expected to create a network of support for victims of child abuse.

(2) Emergency temporary protection

On April 1995, many children who lived with their parents in the compound of Aum Shinrikyo¹⁴⁾, a cult group, in Kamikuishiki Village of Yamanashi Prefecture, were rescued from the site by police officers. The police reported the matter to a Child Guidance Centre owing to the absence of an environment to enable a sound upbringing of children, and the director of the centre asked the police to rescue the children (based on the duty of finders to notify the authorities of children requiring protection under Article 25 of the Child Welfare Law). On the day, 53 children were rescued by Yamanashi Prefectural Police and given temporary protection at Kofu Child Guidance Centre. Adding children protected in Tokyo and Gunma in May, the total number of children exceeded 100. This is the largest number of temporarily protected children in a single case in the history of Child Guidance Centres, except for the protection of orphans immediately after World War II. According to a report by the Child Guidance Centres which protected the children, the staff found that those children who had lived in the cult compound for a long time, not only had physical disorders, such as anaemia or bronchial pneumonia, but were also poor in scholastic ability and had not acquired basic knowledge needed for

14) Aum Shinrikyo shocked the whole of the country. Aum is a new religious cult and has many criminal and civil cases pending against in the courts. It is suspected of manufacturing poison gas in its facilities, abducting and murdering the family of lawyer Sakamoto in November 1989; the Matsumoto sarin incident in June 1994; and the Tokyo subway sarin incident in March 1995. Many believers of Aum were living together in the vast facilities of the religious group and their children were receiving special religious education from the teachers of the cult at these facilities, they were being separated from their parents and not being allowed to go to school even though they were of school age.

daily living, such as taking meals, using the toilet and bathing¹⁵⁾. The parents of the children, the cult followers, thronged the centre many times and demanded that it release the children, claiming their parental rights. Their demands were rejected. Claiming that temporary protection by a child Guidance Centre was illegal, the parents filed suit in court to demand *habeas corpus*. However the suit was also rejected. Of the 112 children, 56 were taken into the care of relatives and those remaining entered child welfare facilities. The case made us reconsider the questions: “what is an appropriate upbringing for children?” and “to what extent can the police and public authorities get involved in such cases?”

If the judgement is made that there is a possibility that the child will remain a victim of repeated abuse or will not be given proper mental and physical treatment if he or she stays with the family, the director of a centre may separate the child from his or her parents and place the child under temporary protection (Article 33 of the Child Welfare Law)¹⁶⁾. Temporary protection centres are attached to the central Child Guidance Centre of each prefecture. At the centres, children under 18, except babies, are cared for and their behaviour is monitored around the clock by guidance staff and nurses. Most of them stay for two or three weeks, but the period is not fixed. The law does not require the consent of parents for this

15) ‘Aum no Kodomotachi no Ichiji Hogo (Temporary Protection of the Children of Aum)’, by Sadayoshi Kitamura, *Seishonen Mondai (Juvenile Problems)* Vol 42. No.12, (December 1995), P.21.

16) According to the report on the results of the investigation conducted by the National Society of Heads of Child Guidance Centres in 1996, out of 2,061 reports of child abuse, the number of reports concerning temporary protection was 844 (41.8%). Classified by causes, 49.0% of cases requiring temporary protection were of ‘sexual abuse’, and 48.4% were of ‘psychological abuse’, and thus these two causes accounted for the majority of cases.

temporary protection (Article 33 of the Child Welfare Law). The temporary protection of children rescued from the premises of Aum Shinrikyo is a good example. However, the Aum case is extraordinary. If a Child Guidance Centre forcefully separates children from their parents for temporary protection, the parents may turn against the centre, which makes it difficult for those at the centre to give the parents guidance. To avoid this scenario, protection is usually carried out with the consent of the parents or by giving them reasons which they can easily accept to persuade them to agree. However, without facilities to educate abusive parents children may again become the victims of abuse and risk losing their life after returning home. In this case, they are admitted to the facilities for long periods of time. About half of the children temporarily protected return home and the other half enter child welfare facilities.

(3) Admission to facilities with consent of guardians

If the presence of abuse is confirmed during a period of temporary protection and it is judged that it is desirable for the child to be separated from his or her family for a certain period of time, the process moves to the next step: admission to a nursery¹⁷⁾, a childcare centre¹⁸⁾ or other child

17) The purpose of the nursery, the 'infant protection institute', is to provide a domicile for infants who have not reached two-years-old, in cases where it is difficult to foster the infants with guardians. Not only are these orphans; in recent years, infants with parents account for as much as 90% of those admitted. According to June 1995 statistics, the number of infants protected in infant protection institutes throughout the country was 2,552.

18) The Childcare Centre is one of the child welfare facilities established for the reception and protection of children, other than infants who have no guardians, who are being abused and whose environment is not favourable. According to June 1995 statistics, the number of children protected in Childcare Centres throughout the country was 25,237.

welfare facilities¹⁹⁾, or entrusting the child to foster parents²⁰⁾ (Item 3, Clause 1, Article 27 of the Child Welfare Law).

Admission to facilities is carried out with the consent of parents or by a petition to a family court in the situation where parents do not consent to admission²¹⁾. If parents fail to provide proper care for their children, admission to facilities is the next best solution for Child Guidance. However, problems are noted. Firstly, where sexually-abusive parents have

19) Depending upon the characteristics of the children, some of them may be admitted to facilities for the treatment of short-term emotionally handicapped children, others to various other facilities for handicapped children.

20) The ideal is that these abused children will be protected by foster parents and be given great affection, if possible, but in our country at present there are very few candidates for foster parents. The number of children placed with foster parents, as of the end of 1994, was only 2,475, which was less than one tenth of those children left with the protection facilities.

21) According to the results of the report on the investigation conducted by the National Society of Heads of Child Guidance Centres in 1996, out of 2,061 reports of child abuse, the number of children where it was considered necessary for them to be admitted to the facilities was 968. Of these, the percentage of children whose parents readily gave consent for admission was 51.2%, and that for children whose parents gave consent after a special effort was made was 21.6%, making the total for the two categories 72.8%. The actual admission rate was 73.6%. On the other hand, the percentage of cases in which guidance was given while the children remained at home was 18.3%, the figures were 6.2% for cases in which both consent and contact were rejected and in which difficulties in correspondence were associated, while 2.0% of the cases were those in which no consent was obtained and admission was being sought through application to the Family Court.

Although the number of cases admitted was 649, almost half of these cases had problems at their homes after their admission. In the meantime, of the cases in which the reason for admitting the children was 'inadequate protection', there was a greater percentage of cases with indifference on the part of the parents, refusal to take the children home, and cases where the parents' whereabouts were unknown.

strong feelings of attachment to their children it is very difficult to persuade such parents to admit children to facilities. It is also difficult to persuade parents who believe in physical punishment or are strongly opposed to public organisations to allow their children to be admitted. If parents change their mind and demand to take over care of their children in the facilities, it is not easy for the facilities to oppose them, given the strong legal rights that parents have²²⁾. After admission to facilities, the Child Guidance Centres try to restructure the relationship between parent and child by having children see their parents at the centre or stay overnight with their parents. However, the centres actually provide children and parents with no professional treatment program. There is criticism that children, admitted for various reasons and living together as a group, are not given sufficient individual treatment (particularly in mental terms). This is partly attributed to a shortage of staff.

(4) Admission to facilities by petition under Article 28 of the Child Welfare Law

If a parent refuses to give consent but the child needs to be separated from its family, the head of a Child Guidance Centre may admit the child by petitioning a family court for approval to admit the child to facilities. However, the number of petitions filed by Child Guidance Centres nation-wide ranges from several to ten-plus a year, showing that this

22) According to the morning edition of the *Yomiuri* of July 3, 1997, the Ministry of Health and Welfare announced its policy of the active implementation of the Child Welfare Law by issuing a circular from the Child Household Bureau purporting that, "The protection rights of the directors of facilities should have priority over those of the parents". Because of this circular it is now easier for Child Guidance Centres to confront parents who are abusing their children.

method is rarely used²³⁾. The reason is that the functioning of Japanese law basically differs from that of US law. In the United States, once a court gets involved in a case, it continues to supervise parental rights, gives directions for the treatment of parents and monitors developments. In Japan, on the other hand, the family court only makes a judgement on whether or not to give approval for admission to facilities, and the Child Guidance Centre may voluntarily become involved in the guidance to parents. The Child Guidance Centre tends to avoid confrontation with parents, it is difficult for the Family Court to confirm the facts supporting abuse, and it takes a long time (usually two or three months) to get a decision. This situation makes it undesirable for a Child Guidance Centre to petition a family court. To take this step, the staff of a Child Guidance Centre may enter the house of the child to obtain the necessary information (Article 29 of the Child Welfare Law). However, if the research in the house provokes a reaction from the parents, the relationship with the parents is damaged and it becomes difficult to give them guidance on improving the relationship between parent and child. Due to this problem, the right to on-the-spot inspection of houses has yet to be practically executed.

Another contentious issue is to what extent the effect of approval by the family court for admission to facilities can limit parental rights. Is the effect limited only to giving approval for admission or are parental rights limited during the admission period? These questions are not clearly answered by the law. The family court assumes that the approval remains effective to

23) The number of pleas submitted to the Family Court for admission to the facilities during the period 1987 to 1994 was on average seven a year. The number of affirmative judgements was on average only five a year.

continuously limit parental rights for a fixed period of time. However, the end of admission depends on the decision of the Child Guidance Centre. To what extent parents can be limited in their involvement with their children is an issue that is difficult to handle in practice.

- (5) Petition for removal of parental rights by the head of a Child Guidance Centre.

If the petition in a family court for admission to facilities is not effective, the head of a Child Guidance Centre may petition for removal of parental rights (Clause 6, Article 33 of the Child Welfare Law). Article 37 of the Child Welfare Law gives the head of a Child Guidance Centre the right to take necessary steps for child welfare. However, in comparison with the strength of parental powers, it is only a limited proxy right.

To match the rights of persons with parental authority, the right to petition for removal of parental rights of persons with parental authority and the right to demand the selection and rejection of guardians is approved as necessary, with the aim of supplementing the limited proxy right.

When the petition for loss of parental rights is made, a provisional order (provisional suspension of parental rights and selection of guardians) is available. Accordingly, it is possible to solve problems by first receiving an application of a provisional order and then obtaining other maintenance rights, such as a change in parental authority and designation of supervision rights. When the centre obtains a provisional order from a family court to choose the head of the Child Guidance Centre which protects the child as the proxy substituting for persons with parental authority, and to suspend the abusive parents' authority, the centre can oppose the demands of the

parents to take over care of the child, even before the pronouncement of a loss of parental authority.

However, the petition for the removal of parental authority by the head of a Child Guidance Centre is very rare. (The reasons will be described in detail when this paper discusses on parental authority under the Civil Code.) The power of the head of a Child Guidance Centre is in practice weaker than that of persons with parental authority.

5. LEGAL MEASURES AGAINST CHILD ABUSE

(A) Measures under the Civil Code

Under the Civil Code, one measure is the forfeiture of parental rights for parents involved in child abuse. Article 818 of the Civil Code prescribes that, “A child who has not yet attained majority is subject to the parental powers of his or her father and mother”. The vital elements of parental rights involve the rights and duties of providing for the custody and education of the child (Article 820 of the Civil Code). In addition, and more specifically, the Civil Code prescribes the rights of the parents to designate the place of residence, the right to discipline, the right to permit employment, as well as the right of management of property and the right of representation (Articles 821 through 824 of the Civil Code)²⁴⁾.

Article 834 of the Civil Code provides that the Family Court may declare the parental rights of a parent lost where he or she abuses those rights or

24) With regard to parental rights, see Yukiko Matsushima, ‘Controversies and Dilemmas: Japan Confronts the Convention’, edited by M. D. A. Freeman, *Children’s Rights: A Comparative Perspective*, Dartmouth, UK (1996) P.129.

fails to exercise them properly. Child abuse is no doubt a ground for such a declaration. The petition for the removal of parental rights may be made either by a relative of the child, or by a public prosecutor (Article 834 of the Civil Code) or by the head of a Child Guidance Centre (Article 33-6 of the Child Welfare Law). Thus, measures have been taken to control acts of child abuse by threatening forfeiture of parental rights for parents involved in child abuse; and, once such an act has occurred, to protect the child by separating it from a parent who places it at risk.

However, these procedures are subject to limitations and, according to the Annual Report of Judicial Statistics between 1988 to 1995, such declarations were only made in about 10 of 90 to 100 cases where applications were made. The reasons for this number being so small are as follows:

Firstly, the Family Court is reluctant to make an order that a child should live separately from its parents. The Court maintains a clear dogma that it is best to rear a child at home and that the mother is "sacred"²⁵⁾. Therefore, the appropriateness of forfeiture of parental rights is decided bearing in mind that the child is to be returned to the home of the parent sooner or later, even if the parent whose child has been separated from is an abusive one. The reality is that there are some mothers with little maternal love and that there are some fathers who would have sexual relations with their daughters. However in many cases such images of the parents and their children are beyond the general apprehensions of the

25) *Gyakutai Mondai kara Kazoku wo Miru (Child Abuse Issue from the Perspective of the Household)*, Atsuhiko Kinoshita, *Jiyu to Seigi (Liberty and Justice)*, Vol.47, No.9, (Sept. 1996). P.84.

Court. Some judges have a preconception that no father could ever assault his own daughter and that no mother could ever abuse her own child. And when parents involved in child abuse cases appear in front of such judges, the judges may tend to trust the testimony of the parents or their attitude of apparent remorse and eventually dismiss the charge.

Secondly, the reason why the number of charges brought by plaintiffs is small, particularly from the heads of the Child Guidance Centres (one charge a year on average), is that the Child Guidance Centre has two extremely contradictory missions within one institution: one is the mission to assist the family of a parent who abuse his or her child; and the second is to punish the parent who abused his or her child. It is the policy of the Child Guidance Centre to help parents and children rebuild their relationship as a family and it tries to avoid at all costs categorising parents as failed parents by initiating legal proceedings. There is a tendency for the Child Guidance Centre to offer a soft-touch type of welfare-oriented assistance, where it tries to use persuasion with the relevant parent as much as possible.

This is out of the fear that it would be difficult for it to provide future assistance if the Child Guidance Centre and the parent fall into a hostile relationship. In the United States, compulsory separation will be exercised through judicial intervention. Then education is provided to the parents responsible for the protection of such children under the supervision of the Court. In Japan, however, the head of the Child Guidance Centre will make a decision to declare the removal of parental rights only after it has been found that no headway can be made by continuing to use the soft-touch type of welfare-oriented assistance. However, the Centre is still reluctant to make applications since the Family Court in many cases tends not to accept such a plea, even once entered, due to the reasons described

above.

Thirdly, Article 834 of the Civil Code lacks flexibility in that it only provides for the total removal of parental rights. This 'all or nothing' approach produces a reluctance in the minds of decision-makers to make the declaration. In view of the above, many scholars and lawyers propose a system of 'temporary suspension of parental rights' instead of full-scale forfeiture of parental rights.

In addition to the above, the following points can be considered as reasons why the system of loss of parental rights under Civil Law is not sufficiently used:

- (i) The fact of child abuse is rather difficult to prove since the event occurs behind closed doors.
- (ii) There is a fear that a declaration of the loss of parental rights will prove to be a handicap to the child in the long-term since the declaration will be recorded on his or her family register²⁶⁾, even though such a declaration would temporarily fulfil the welfare needs of the child.
- (iii) It is not easy to find an appropriate guardian to bring up the child since there are few candidates for guardianship after the loss of parental rights is effected.
- (iv) Under the current Civil Code, a guardian is selected from private individuals who have no official status, consequently the private

26) The Registration System of Japan is a detailed recording system of family relationship which is unique in the world and its importance and impact on the people of Japan is great. However, its nature is one that it is rather difficult to be understood by people of other countries.

individual will be recorded on the child's family register. Thereby, the guardian is left open to private attack by the child's biological parent.

In the meantime, if the causes behind the forfeiture of parental rights have ceased to exist, the Family Court may, on the application of the party concerned or of any of that party's relatives, revoke the adjudication of the forfeiture of parental rights (Article 836 of the Civil Code). However, this leaves some problems unsolved. For example, how can the alleged improvements in the attitude of the abusive parent be proven in cases where the parent and child are separated?

The following is a precedent case of child abuse:

The case of the adjudication made by the Hachioji Branch of the Tokyo Family Court on May 16, 1979²⁷⁾.

In this case there was a couple, Man A and Woman B. Because their eldest daughter, X, was assaulted by Man A and forced to have a sexual relationship with him when she was in the second grade of junior high school, she and her mother, Woman B, left home around 1973.

The marriage of the couple was annulled by a court in 1976 and Man A was given custody of their three children (eldest son, eldest daughter, and second daughter) since the livelihood of Woman B was unstable. However, Man A did not engage in work, using an excuse of being weak, and received public assistance under the Daily Life Protection Law. While being alcohol dependent, he not only failed to protect his second daughter Y but also forced her to have sexual relations with him, assaulting her as soon as

27) *Kateisaiban Geppo (Monthly Bulletin on Family Courts)*. Vol.32, No.1, P.166.

she started the first grade of junior high school. After the eldest son left the home, Man A's forceful requests for sexual relations with Y became more outrageous until Y ran away from her home and she asked her teacher at junior high school for help. The teacher notified the police and Y was placed under the protection of a Child Guidance Centre through police action. However, Man A pressurised the Centre into returning Y, on the ground of his parental rights over Y. The head of the Child Guidance Centre pleaded with the Family Court for a declaration of the loss of Man A's parental rights. In response to this, the Family Court first suspended the performance of his duties as the holder of Y's parental rights as a 'provisional disposition before the trial' and appointed the head of the Centre as the representative. Next the Family Court adjudicated that Man A would lose his parental rights, determining that, "It is improper to let Y be subject to the parental rights of Man A, since it has been concluded that Man A abused his parental rights and abused Y unreasonably, and caused significantly harm to her welfare."

The above is a very rare case where the head of the Child Guidance Centre pleaded for the declaration of the loss of parental rights and the plea was approved by the Family Court.

(B) Measures under Criminal Law

Under criminal law, there are measures in which sanctions by punishment are prescribed so that child abuse or negligent non-interference can be prevented. For example, in cases where child abuse occurs, any recurrence of such an act will be prevented by punishing the parents involved in child abuse, by charging them under criminal law with: abandonment by a person responsible for the protection of the victim, infliction of bodily injury,

infliction of bodily injury resulting in death, or rape.

Penalties under criminal law are as follows: for abandonment only, imprisonment with labour for a term of more than three months and not exceeding five years; for infliction of bodily injury on a child, imprisonment with labour for a term not exceeding ten years; for infliction of bodily injury resulting in the death of a child, imprisonment with labour for a limited term of more than two years; and for rape, also to imprisonment with labour for a limited term of more than two years.

However, criminal sanctions against a parent who abused his or her child do not always serve the best interests of the child. This is because a child will continue to need its parent. For example, in a family where the child lives with one parent, if the father or mother is imprisoned, the child will immediately lose its place of abode through having no guardian (although in many cases the child will be taken in by relatives or placed in a facility). In cases of a suspended sentence or punishment by a fine, the parent who abused the child will continue to live with the child as before, therefore, the child will not lose its domicile. However, the risk will remain that such child abuse will be repeated. In addition, as child abuse is a crime conducted confidentially and since many of the victims are babies or young children, it is often difficult to prove. Even if the child is at an age to be able to testify, the child will find such testimony difficult due to fear of retaliation by its parent. Furthermore, if the child is repeatedly asked the same thing at different institutions, the child might be psychologically harmed by repeated questioning.

Consequently, there is naturally a limit to dealing with child abuse through criminal law, and I can say that it only plays an *ex post facto* measure in ending child abuse. In reality, criminal law does not play an

important role in preventing child abuse.

6. REVIEW AND PERSONAL APPRAISAL OF THE JUDICIAL AND ADMINISTRATIVE PROCEDURES AGAINST CHILD ABUSE

(A) Problems under the Child Welfare Law

(1) Clear prescription concerning the child abuse

Article 34 of the Child Welfare Law enumerates many acts to which it is illegal to subject a child. However, when we look at them in detail, we find many things that have no bearing on present times, such as not letting a child engage in begging, or in acrobatics (circuses), therefore, it is necessary to review this article. The most crucial problem lies in the fact that are no words prohibiting child abuse, the words, "no one should abuse a child", are not found. In view of this, it is necessary to plainly prohibit child abuse and to provide a clear definition of child abuse.

(2) Reinforcement of the duty of notice

The duty of notice, when any child requiring protection is found, is prescribed in Article 25 of the Child Welfare Law²⁸⁾. It is a duty imposed upon all people to report a child that has no guardian or is being cared for inadequately. However, there are no penalties for failing to report such a situation. Therefore, the legal validity of the duty is weak.

28) Article 25 of the Child Welfare Law prescribes, "A person who finds a child who has no guardian or a child who is inappropriately protected by his or her guardian shall inform a welfare office or Child Guidance Centre of the child."

This being the situation, for persons of specified occupations the onus of reporting child abuse when noticed should be clearly prescribed, as they are prescribed in the reporting laws of the United States. More specifically, it is considered necessary to impose this duty of reporting upon those who are able to obtain information, or see the facts of the child abuse, through the performance of their jobs. Such people would include: public health nurses, day nursery teachers, teachers, medical doctors, nurses, police officers, as well as the caseworkers of the welfare offices and the Child Guidance Centres. They should be subject to fines if they fail to report abuse, but also they should be provided with immunity from responsibilities under criminal law and civil law even if the report so made was later proved to be incorrect. In the United States some harmful results of this reporting duty have been recently reported²⁹⁾. However, there is an impression that Japan is ten to twenty years behind the United States in terms of countermeasures against child abuse, and also that the existence of child abuse itself is not sufficiently recognised. At the same time, the perception in Japan is that child abuse is a family matter and that it is not desirable for the administration to intervene in family affairs. For this very reason, where there is an environment in which the issue of child abuse is latent, I think it is important to increase the onus on those who are in a position

29) For example, some reports indicate that one half of the reports were proved to be groundless suspicion, such as cases in which teachers, medical doctors, public health nurses and others who were afraid of being charged with the violation of their reporting duties reported some cases involving only the slightest suspicions. In others, neighbours formed hasty conclusions, and in one case parents believed a fabricated story of a child who reported being abused by a school teacher. Ref note 10 above. P. 149.

For a book that introduced the reporting laws of the United States and tried to compare them with the laws of Japan, see Oyako to Ho (*Laws of Parent and Child*), by Norio Higuchi, Kobundo (1988), pp.94-121.

where they can easily see abused children to report suspected child abuse. Also, it is important to confront people with the actual issues. I am of the opinion that the strengthening of the provisions concerning this reporting duty and the legislating of the associated immunity provisions should be considered.

(3) Utilisation of the authority to make on-the-spot inspections

Article 29 of the Child Welfare Law clearly prescribes that the commissioners for child welfare may enter a home without a court order (or a declaration by the court) where there is child abuse taking place as they feel necessary and may investigate the situation and question those involved. However, this right to make an on-the-spot inspection is not actually utilised. It is said that the reasons for this are to avoid the commissioner having to have an unnecessary confrontation with the parents. However, when we consider that it is crisis intervention at the point when the life of a child is endangered, the commissioner should make on-the-spot inspections because he should correctly understand the developing situation and collect the evidence by all means possible, even if this means a confrontation with a parent. It is essential that those in the Child Guidance Centres are not afraid of confrontations with parents. In addition, I think that the strengthening of the groups of caseworkers who are dealing with child abuse should be pursued. This includes increasing their number as well as providing for the continuing education of those people as specialists.

(4) Reflections on the desires of the children

A revision made to Article 26, Paragraph 2 of the Child Welfare Law,

added the duty to listen to the opinions of the child at the time when measures are taken by the Child Guidance Centre. I think this is one of the most important innovations of the recent changes in the law. However, the issue of whether a child can apply for admission to the Child Guidance Centre by himself or herself was left untouched. The situation remains that admission to the Child Guidance Centre is permitted only in cases where there is agreement by the person holding parental rights over the child or where there is an affirmative result from the Family Court hearing. However there is no system yet established where the child himself or herself can plead directly to the court for admission. In view of this, it is desirable that the right to plead for admission to the child welfare facilities is acknowledged if the child in question has the ability to make his or her own judgement. In addition, the release of the child from the Centre is at the discretion of the head of the Centre at present. In order to prevent an arbitrary release, it is desirable to have the release checked by another institution, and for those making the decisions to respect the desires of the child.

(B) Problems under the Civil Code

(1) Removal of the disciplinary right

The legal right to discipline a child, prescribed in Article 822 of the Civil Code, presents some questions pertaining to child abuse. The disciplinary rights of a child's guardian are clearly stipulated in Article 822, and this forms the legal ground for justifying corporal punishment by a child's guardian. If the family unit works properly, and the good sense of a father and mother can be relied upon, the right to discipline cannot in most cases be questioned. However, in cases of child abuse, the major problem lies in

the fact that the right to discipline is being misused under the pretext of administering acceptable home discipline to the child. In addition to this is the fact that many parents involved in child abuse do not have any self-awareness that they are abusing their children. The existence of the right to discipline under the Civil Code leads to a situation in which the safeguarding of human rights and the welfare of the child are hindered. Therefore, the provisions of the disciplinary rights should be abolished.

(2) Exercising the forfeiture of parental rights by stages

As described above, for an assortment of reasons, loss of parental rights is a measure that is not actively used to separate a child from an abusive parent. In view of that, the Japanese bar association and other scholars are proposing the legislation of a system for 'temporary suspension of parental rights'³⁰⁾ not the absolute forfeiture of parental rights. If the measures only temporarily suspend parental rights, the parent in question will not have any fear that he or she will lose his or her child and such parent should be more co-operative. In addition, from the standpoint of the administration, it will be easy to oppose a child's parent if there is a legal endorsement of such measures. I suggest that the parental Law under the Civil Code should be revised to allow a declaration of temporary suspension of the rights of protection where the holder of parental rights cannot exercise them or where the welfare of the child is significantly injured because the exercise of the parental rights is inadequate.

30) For example, *Kodomotachi no Egao ga Miemasuka (Can you see the smiles of children?)*, Report of the symposium of the Japan Federation of Bar Associations, (1991), P.77.

In connection with the above, the plaintiffs in a case where an application is made for a temporary suspension of parental rights should be: the child itself (having a stipulated age, for example 15 or older); a relative of the child; a prosecutor; and the head of a Child Guidance Centre. The opinions of both the relative of the child and the child should be listened to during the procedures. Also, no record should be made in the family register regarding the temporary suspension of parental rights. Furthermore, interviews of the parent and the child should be temporarily prohibited. The domicile should be reported to the relevant facilities. Any disruption to providing medical treatment to the child should be prohibited. If such individual orders can be issued by the Family Court, then responses to cases of child abuse can be made more speedily. For example, for parents who stubbornly oppose blood transfusions for their children because of religious beliefs, a temporary suspension of parental rights in regard to the 'Prohibition of disruption to providing medical treatment' will be made. And, if there are measures of temporary suspension of the parental rights with regard to the 'return home of a child from the facilities', the facilities, too, can oppose the return of the child to the parent or guardian a fearless manner. Looking at the rights of the defendants, consideration should be given to the interests of the person vested with parental rights in cases where it has become possible for the parent to protect and educate the child. In such cases, after the period of temporary suspension is over the parent or guardian should be able to plead for cancellation of the declaration of temporary suspension. If it is clearly prescribed that the period of temporary suspension of parental rights and the renewal thereof shall be left at the discretion of the Family Court and that, in a case of emergency, the procedures require no examination, the Family Court will be able to act quickly and flexibly to different situations. Thus, it can be expected that such measures will be utilised more actively.

If the time comes when there is a variety of measures that can be taken: where advice and assistance can be provided whilst leaving the child at its home; where parental rights can be temporarily suspended under the involvement of the judicial institution; and where the parental rights can be completely forfeited. Then, the response of the authorities to cases of child abuse will be remarkably improved in terms of both speed as well as flexibility.

Measures should be decided that balance the infringement of the human rights of the child against whether the measures of assistance, including the declaration of the loss of the parental rights, are effective. It would also be necessary to review and utilise the measures of loss of parental rights from the viewpoint of the best interests of the child.

(C) Forming a network for relief institutions

If child abuse is discovered, it should be necessary for those concerned: the staff of the Child Guidance Centre, specialists, as well as caseworkers, police officers, public health nurses, medical doctors, lawyers, and others involved in the issue, to get together and hold a network session so that information can be exchanged to solve the problem.

At the private-sector level, the importance of horizontal relationships has already been realised and the formation of networks has already been tried. The 'Child Abuse Prevention Association' was inaugurated mostly by those involved in medical treatment and by lawyers in Osaka in 1990; and in Tokyo, the 'Child Abuse Prevention Centre' was established in 1991. In addition to the above, many further networks were formed in Japan. In

April 1996, the nation-wide 'Child Abuse Prevention Study Society of Japan' was launched. Bar associations in different regions are involved in activities including telephone consultation services and interviews for children and parents. This involvement comes through the establishment of: the 'Children's Human Rights Tel. No.110' (Tokyo Bar Association); the 'Children's Human Right Relief Centre' (Tokyo Bar Association); and the 'Consultation Window for Children's Troubles' (the Second Tokyo Bar Association).

Responding to such moves, in fiscal 1996, the Ministry of Health and Welfare has started on an administrative level a case management model project in eight Child Guidance Centres around the country³¹⁾. The project is designed to provide a comprehensive framework in which the Child Guidance Centre will be able to deal with difficult cases through collaboration with a team involving the Welfare Offices, medical doctors, lawyers, police officers, and persons involved with public health centres. It is hoped that these model projects will be generalised and effectively used. Now in Japan a real approach is being initiated on the issue of child abuse, if a little belatedly.

7. CONCLUSION

31) In addition to the above, *Kodomo Gyakutai Boshi no Tebiki (The Guide to the Prevention of Child Abuse)* was published under the supervision of the Child Household Bureau of the Ministry of Health and Welfare in March 1997 and distributed among the institutions concerned with child welfare as well as the educational, health and medical institutions. This illustrates that the administrative agencies are in recent years taking more positive measures toward the prevention of child abuse.

It can be said that the widespread recognition of the child abuse issue as a social problem in Japan is just a recent phenomenon. The first reason for this is that the total number of cases of children being abused has increased and the causes of child abuse have changed which now draws the attention of people at large. It should be noted that child abuse is not caused solely by poverty but by a complexity of assorted factors such as fewer children, an increasing tendency toward the nuclear family, a decreased sense of responsibility to nurture children owing to double-income lifestyles and the loss of the guardian function in some communities. The second reason why the issue of child abuse has become a social problem is the increased awareness of human rights. Particularly with the signing and ratification of the Convention on the Rights of the Child, momentum has been given to an increased recognition that a child should not be simply seen as an object that is to be protected by its parents or society. But rather that a child has its own human rights and should be respected as an individual. Although it is said that a child should not be protected simply as one of the weak, a child can maintain his or her life, in practical terms, only by the protection of his or her parents at home. The life of the child depends primarily upon the protective and nurturing function of the family unit.

However, in concrete terms, the rapid increase in the number of divorces is accelerating the collapse of the family unit, and the family that should protect its children is actually collapsing. Now, the widespread recognition is that the problem of child abuse can no longer be solved through relying upon the protective function of the family, nor by enhancing such function.

In the recent revision of the Child Welfare Law, efforts were made to form a network of consultative and assisting systems in regions through

establishment of the Child and Family Support Centre, while strengthening measures for fatherless families. However, practical fieldwork places an emphasis on the protection of the family as a unit rather than the protection of individual human rights in the family, since the system is structured on the reconstruction of the family unit. Actually, despite the fact that the original extended family structure has already dissolved and that different forms of families have been created, the doctrine of traditional family harmony cannot be completely wiped out and as a consequence, the protection of the human rights of the child is subordinated.

Looking at the parent-child relationship from a legal perspective, parental rights are still the dominating influences on a child. In their origin, the laws of Japan stand on the premises that a parent is a reasonable and rational object and Japanese law does not consider the existence of undersirable parents. In addition, the perception of a child as an independent, separate entity is weak. These two facts make it difficult to give relief to an abused child. Without a system that directly hears the voice of the child, an abused child will be the victim while the parents will continue to wave the flag of parental rights.

The relief of child abuse is the relief of failed families themselves where the parents are not correctly performing their protective functions. As described above, the sense of autonomy of the family is as strong as in the Japanese family in the past. There is a tendency to exclude intervention in family affairs by the state or society as an infringement of privacy.

However, from the perspective of safeguarding the human rights of the child as an individual currently being abused, relief should be pursued by exercising the force of the law. Such laws should have more flexibility to be able to react to individual situations. We should not simply be satisfied

with the policy of the reconstruction of the parent-child relationship, which is the one that is currently being carried out in most practical casework studies.

I am of the opinion that what Japan needs is the creation of a comprehensive system of laws and policies that would enable the state to become positively involved in the issues of child abuse.

<付記>

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