

Some Inhibitive Factors of Visiting after Divorce in Japan

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Introduction

In the Japanese divorce system, divorce law orders sole custody to one parent after a divorce and does not have any provision of visitation rights. 90% of all divorces are uncontested divorce cases. These cases do not need to go to family court, because parties only sign divorce papers. All agreements regarding child custody completely depend on the parties. The Japanese divorce system lacks measures to confirm and enforce the party's agreements. Since there is a lack of these measures, there is a rapidly increasing trend that the non custodial parent goes to family court to be awarded visitation rights. However, the increasing trend of court cases does not increase the number of visitations. According to a survey, 58% of parties with children who are minors take advantage of visitation rights, but only 19.5% engage in visitation on a regular basis (Shinkawa, 2005). Furthermore, in mediation and court cases, one parent can refuse another parent's visitation. Thus, visitation by a non custodial parent is hardly recognized among Japanese society. Some researchers, practitioners and party groups argue that flaws exist in the divorce system which inhibit visitation by a non custodial parent. The party groups also claim to legislate for visitation rights as well as to reform the uncontested divorce system itself. In reality, however, these policies have less a small possibility of implementation and are arguments made from an ivory tower.

In this study, by focusing on family relationships among the divorce parties rather than the divorce system, I analyze some factors which hinder the non custodial parent's ability to visit his or her child. First, by analyzing fifteen court cases, including mediation cases I confirm that the disputes of visitation arise when custodial parents refuse visitation, and I analyze some inhibitive factors of visitation in a sociocultural context. In conclusion, I will introduce some suggestions for policies which can be utilized in most divorce cases involving children, uncontested and contested.

Results & Discussion

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It is already said that the denial of non custodian's visitation stems from bitterly emotional conflicts between parents (Ninomiya, 2004). After studying these particular cases, I became aware that parents with children returned to their *jikka* after a separation or a divorce. The Japanese concept of family is different from other countries. Generally speaking, *jikka* in Japan is the natal family of one parent. In most cases, the custodial parent's life in the *jikka* is one significant element that intensifies emotional conflict between parents. In this research, custodial parents stayed in their *jikka* with their children in nine out of fifteen cases. In seven cases, non custodial parents also lived in their *jikka*.

Generally the court system, particularly the adversarial system, is said to be a factor which leads to deep emotional conflict between parties. But the exclusive and uncooperative attitude of the custodial parent which hinders visitation develops from a life in the *jikka*. By living together, the relationship among the extended family (i.e. the grandparents, the siblings of the parent) makes their solidarity strong. Eventually animosity towards the non custodial parent strengthens. As long as there is a conflict between the divorce parties, reforming problems within the court system is ineffective in expanding visitation rights. That is because the parties of uncontested divorce can complete divorce procedure only by submitting divorce papers to an administrative institution without using any court services.

Although living in the *jikka* creates previously mentioned negative factors that inhibit visitation, positive factors also exist, such as establishing a support system to rear the children. Since the support of grandparents is unpaid and flexible, the grandparents assist the custodian and children from both an economical and mental side. Subsequently from the positive factors, the negative factors arise later. For instance, the *jikka* creates a sense of belonging which strengthens through the daily lives with the grandparents, eventually establishing a strong sense of solidarity among the family members. As a result of this strong familial sense from the *jikka*, custodial parents exclude non custodial parents in child-rearing. Furthermore, since mediation between divorce parties is held and organized by the family court, these disputes are similar to divorce parties settling in a trial. Thus daily life in the *jikka* after a separation or a divorce directly affects the perception of the custodian towards visitation, rather than the adversarial system in court.

When analyzing the functional roles of the family, if the father is the custodial parent, the grandmother who lives with the children plays a mothering role instead of the real mother. It is clear that in this relationship, the *jikka* was the underlying factor in denying visitation to the real mother. The proper roles between the generations are not delineated and a new type of family is formed without the non custodial parent. It is a significant insight that the role of rearing the children is done by the grandmother in the *jikka*. Eventually the need of the non custodial parent diminishes. On the other hand, if the mother takes care of the

children, she does not need as much assistance in child-rearing from the *jikka*, but needs assistance economically. As the *jikka*'s support works to stabilize the mother's mental and economic health, the mother's sense of belonging in the *jikka* strengthens.

In this process, the need for a father is diluted and visitation is subsequently refused. Thus if someone in *jikka* plays a role of the caregiver on behalf of the non custodial parent, the non custodial parent is prevented from developing a relationship with their children. During mediation or trial cases, custodial parents emphasize how their grandparents are so cooperative and devoted in rearing their children as evidence against the need of the non custodial parent, and thus, justify the denial of visitation. There exists a strong gender role ideology in the family structure. It seems that the sense of belonging to a *jikka* is for a personal and specific reason that differs in each case. However, this sense of belonging strongly relates with a sociocultural idea which is shared unconsciously in Japanese social norms.

Suggestion

Finally I suggest a social policy for uncontested and contested divorces with children, to implement visitation on a regular basis. I recommend that Japan introduce its own idiomatic Japanese parent program that considers both the concept of the family as a *jikka* and the Japanese uncontested divorce system.

References

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