
MEASURES TO IMPROVE GENDER EQUALITY IN PROPERTY ISSUES OF REMARRIED COUPLES

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The values concerning marriage and family are changing in Korean society. These changes that are interlocked with such social phenomena as aging population, increased life expectancy, and increase in remarriage after bereavement and divorce are resulting in the increasing number of stepfamilies. Of those who choose to remarry, not a few enter into de facto marriages, evading the report of marriage for fear of causing such family problems as the conflict with children over property issues. However, the current legislation concerning the property of a couple and inheritance is not properly responding to such changes. This is demonstrated not only in family conflicts but also as gender inequality against women who are relatively in vulnerable situations in family dynamics in terms of property issues, which are also caused by

conditions in the legislative system left unadjusted and uncoordinated.

In this context, this research reviewed and analyzed legal issues and problems related to the property of couples of stepfamilies from the perspective of gender equality. Furthermore, in response to changing family values and an aging society, the purpose of the research was to suggest measures for legislative rearrangement in the direction of improving gender equality between couples of stepfamilies.

To identify legal issues and problems in the property of couples of stepfamilies, review and analysis of the cases applied for legal counseling concerning the property of stepfamilies to the Korea Legal Aid Center for Family in 2015 and 2016 were made in cooperation with the Center. With a view to grasp the trends in remarriage, the issues and tendencies concerning the property of remarried couples, and legal problems thereof, a conference was held inviting the staff members of matchmaking companies who specialize in remarriages, and relevant professionals in academic and legal circles.

The results of viewing the issues concerning the property of couples through the prism of remarried couples revealed the following problems. Irrationalities in the existing matrimonial property system became more distinctively apparent. Private autonomy was guaranteed only as a formality. When the operating mechanism based mainly on 'legal' system was applied to the phenomena of diverse changes in family, some areas were found where it caused inconveniences to diverse types of families, including stepfamilies. Besides, for spouses who are vulnerable, particularly from a gender perspective, with relatively weaker pensionable rights, which are representative component of safety net, the problem is complexly linked to current conditions, where the provision of livelihood entailing the changes in family status, including conjugal relations, relies not on the public system but excessively on private relations, including property division, etc. To find solutions for such problems, direction for improvement was sought in the following three stages. First, the system

concerning matrimonial property should be improved to enhance gender equality between a couple through the establishment of clear legislative guidelines on matrimonial property relations that reflect the changes in family and society such as the increase in divorce and remarriage. Second, as a suggestion for coping with such diverse changes as increase in remarriage, the direction should be set in which a practical level of private autonomy in matrimonial property relations is guaranteed while setting the limits in unfairness found from a gender perspective at the same time. Last, through strengthening of individual pensionable rights that are not affected by changes in marital relations, the vulnerability resulting from the gender-dependent design should be overcome, particularly by the public support system, and thereby a relevant social safety net be reinforced.

In line with such direction, improvement measures are suggested as follows. First, the extent of peculiar property, including inherent property, and that of the property estimated to be jointly owned between a couple should be clarified to be specified as legal provisions so that they can be linked to the property that is subject to division. Furthermore, the principle of equal division, predicated on the clarification of the property subject to division, should be specified as provisions, and the property division system should be improved to enable the claim for property division even in the cases of termination of marriage due to death of spouse. Second, with regard to the matrimonial property system and inheritance system, the improvement measures that give individuals the options and opportunities to exercise property rights and enable the preparation of the agreement on matrimonial property even during the period of marital life for the purpose of practically guaranteeing private autonomy were suggested. To enhance applicability of the system that is almost dead, along with diverse application of relevant legislation, rearrangement of the matrimonial property agreement system and enhanced applicability thereof, as well as the application of trust as a substitute for wills concerning inheritance,

were suggested. Last, the measures that will prevent individual rights to receive pension from being affected by changes in marital status were suggested. Individual rights to receive pension should be guaranteed to all people. In the case of the shared pension system, the amount to be received should not be the division of the amount a pension carries, but should be divided in proportion to the contribution to income. In addition, the amount of benefits of such pensions as survivor pension or dependant pension, of which the right to receive is derivative in nature, needs to be gradually reduced or switched to individual rights to receive. To this end, expansion of credit in the form of social recompense for caregiving to fill the gap resulting from the reduced right to receive benefits derived from marriage relations was suggested.