

LEGAL SYSTEM IN KOREA: AN INTRODUCTION

KOREA'S INITIAL CONTACT WITH WESTERN LAW SYSTEMS: 1866-1910

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It was in the late 19th century that the Hermit Kingdom got its first brush with law. Till then they were politically introvert. The Japanese dispatched three warships which broke through the Korean defense in 1875. The fleet arrived at the river entrance below Seoul in the first lunar month of 1876. After negotiations the Japanese came up with the Treaty of Kanghwa in February 1876. Among the first gifts of the Japanese to the Korean minister in charge of government protocol were two copies of the Chinese translation of Wheaton's international law. But it was not until 1894 that a westernized judicial system was established in Korea.

Soon after the Japanese victory over the Chinese in 1895, they passed through a series of edicts and laws. That time also saw the creation of a school for training judicial officers in western law. It also adopted a two-level system of courts. The local court was to act as the court of first instance. A separate group of courts was set up in ports open to foreign commerce for foreigners. There were two courts of appeal. One was a circuit court that went around the country. The other was the High Court located at the ministry of justice. A special court was separately organized to deal with criminal proceedings against a member of the royal clan. In January 1895, the King promulgated 14 fundamental laws. As the Japanese influence on Korea weakened, the King declared in end July that no edict given by him was of his free will and as a result he annulled them. In early October, the Japanese invaded the palace and killed the queen. Then the King agreed to abide by the reform.

Generally in confrontation with a western civilization, an Asian elite tends to be overwhelmed by the military might of the west. This was quite true with Korea also. The budget for 1896 provided for 28,921 won for the military academy and only 600 won for the law school.

Despite the confusion, the government managed to publish a collection of new laws, *Pokpyn Yup'yon* in January 1896. Three years later, in 1899, a law revision committee was established.

The first westernized criminal code was promulgated in 1905. This new code, *Hyongpop Taejon*, was a rearrangement of traditional rules in a European code format. After the Treaty of Portsmouth, Japan began to consolidate its interest in Korea by coercing a protectorate treaty upon Korea. Though the prime minister did not approve it, the agreement The Japanese disbanded the Korean ministry of foreign affairs and all diplomatic decisions would be taken in Tokyo.

The Korean king sought help from the United States. He asked the president to use his influence to prevent the unilateral imposition of the Japanese protectorate. He later made another attempt to appeal to international law by sending secret envoys to the Second Peace Conference at the Hague in 1907. Henceforth, the international law which had consistently eluded the Korean emperor's understanding was to work against Korea's independence till the end of World War II.

In December 1907, a new law of Constitution of the courts was promulgated. Now there were to be three levels of courts: one Supreme Court in Seoul; three courts of appeal in Seoul, Pyongyang and Taegu; eight local courts and 113 district courts.

This ended the first phase of modernization of the Korean law. Tragically for Korea, each step to reforms was accompanied by a progressive loss of national independence. The new system of law under the Japanese colonial rule only aggravated the ill-will

against the westernized legal system. This unfavorable heritage continues to afflict the westernized legal system of Korea even to this day.

KOREA'S CONTACT WITH WESTERN LAW SYSTEMS: 1910-1948

The governor-general was empowered to issue ordinances for a violation for which he could prescribe no more than one year of imprisonment and a fine of no more than 200 yen. While enacting a law in Korea it should be by an ordinance called *seirei*. No *seirei* could take effect if it was in conflict with Japanese laws effective in Korea.

A civil matter involving only Koreans was to be regulated as a rule by the Korean custom. In family and succession matters the Korean custom was to be followed unless otherwise specified by law. But it was not until 1920 that the practice of confining Korean judges to those cases where only Koreans were involved was finally abolished. In criminal cases Japanese law was applicable but with regard to murder or armed robbery committed by Koreans the Korean laws were applied. This was because the Korean laws provided for serious punishments.

Thus in 1925 there was one Supreme Court, three courts of appeal, 11 local courts and 160 branch offices of the local courts. But by 1940, there was less of traditional laws and customs of Korea being applied in Korea. By then the Japanese had imposed their hegemony over every facet of Korea. In September 1940, there was no Korean in the 10 judges on the highest bench of Korea; only four out of 35 judges of the courts were Korean and only 10% of the 180 judges in the courts of first instance were Korean. What was more unfortunate was that under the westernized legal system, law was being administered by alien judges in an alien language. As a result, the western legal system was turned into an instrument of ruthless exploitation.

The United States Military government in Korea

The US troops began to land in Korea on September 8, 1945. The US military governor thus became the acting governor-general. Even in the absence of a clearly enunciated judicial policy the American members of the government felt it to be their task to instill into the minds of the Korean lawyers the Anglo-Saxon conception of due process of law or the rights of the individual before the courts. Many of the Japanese judges had voluntarily left their jobs before the American troops arrived.

On October 9, 1945, all the laws, ordinances and regulations that had been put into effect in pursuance of a policy to suppress the nationalistic aspirations of the Koreans were repealed. By end of October a 100 cases had been disposed by the provost courts in Korea. A large proportion of these were larceny cases. During December 1945, a new national Bar association was formed giving membership to anyone who was a member of the legal profession under the Japanese.

Later in November 1947 the military governor intervened in a case. This caused a lot of consternation in Seoul as the Koreans opposed the American interference in Korean courts. Despite these difficulties, the military government made serious efforts to modernize the Korean legal system. The military government capped its three-year rule with the "Proclamation of the Rights of the Korean People" on April 5, 1948. Eleven inherent liberties were enumerated in the proclamation. It included all liberties in the American Bill of Rights, although the exercise of the basic liberties such as those of the press, speech, assembly, association were disqualified by the phrase "provided they are not inflammatory to the extent of inciting disorder or the over-throw of the government."

The degree of success in the military government's effort to de-Japanise the Korean law was rather small. With the exception of the changes in the criminal procedures

introduced in March 1948, the legal system remained basically Japanese. The organization of the judiciary, the bar, the legal education and its curriculum and the bar examination remained fundamentally unchanged. But as a whole the impact of the American legal system was slight. Even the changes in the criminal procedures introduced by the Americans largely remained irrelevant. Conclusion

The Korean legal system has come a long way since it was exposed to law over a 100 years ago. But , even today, the law system is more or less based on the Japanese concepts which were enunciated then. Though the Americans tried to bring in their concepts, the Korean model has been the Japanese.