

There are other clauses that are not applied by Articles 8 or 9 but harm consumers' interests one-sidedly. Therefore Article 10 denies the effect of clauses of consumer contracts that restrict the rights of consumers or expand the duties of consumers, against the principle of loyalty and good faith, beyond restrictions and expansions that would otherwise apply by application of the discretionary provisions of the Civil Code, the Commercial Code and so on.

Editorial Note:

It goes without saying that this Act is useful for protecting consumers. But this Act has been criticized for containing various problems from the point of view of the protection of consumers. The biggest problem is that this Act does not impose on businesses the duty to provide to consumers information requisite for consumers to make decisions. While Article 3 of this act requires businesses to strive to provide consumers with the information requisite for consumers to understand the contents of consumer contracts, such as their rights and duties, there is no sanction resulting from the violation of this provision. An early draft of this Act provided with a duty for businesses to provide the information to consumers, the violation of which would give consumers the right to avoid consumer contracts. But finally, because of businesses' loud objections, this draft was changed as mentioned above.

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4. Family Law

An Act Regarding the Prevention of Child Abuse

Law No. 82, May 24, 2000 (Effective on November 20, 2000)

Background:

Recently, in Japan, child abuse has been focused upon with great concern by the mass media and many fatal cases of child abuse have been reported. As a result, social concern about child abuse has grown in Japan. The number of counseling cases of child abuse at Child Guidance Centers were 1,101 in 1990 and rose to 2,722 in 1995. But it exploded to 11,637 in 1999, which is a tenfold increase in a single decade. Child abuse often happens in a family behind closed doors and most children are unable to appeal for help. Furthermore, once abuse begins, it seems difficult for the family itself to solve the problem, and without external assistance in such a situation, the abuse will inevitably escalate, and, in the worst case, may result in the child's death. Therefore, we need a better legal system in order to minimize the risks to children by giving external assistance to families at risk, and when necessary, employing forcible intervention.

Legal regulations concerning child abuse in Japan have been provided by the Child Welfare Law, the Civil Code and the Penal Code etc. The Child Welfare Law lays down regulations for reporting and investigating abuse cases involving entering a residence (Art. 25 & 29), admittance of the child to a child welfare facility (Art. 27 & 28), temporary custody at the facility (Art. 33) and so on. However, the Child Welfare Law has had the broad purpose of ensuring the healthy upbringing of children and not particularly dealing with severe cases of child abuse that lead to severe violence between parents and children requiring forcible intervention in the family. Child Guidance Centers enforcing these regulations had been seen as institutions for counseling parents and children having problems and to giving them support; as a result, the Center tends to avoid being adversarial with family members. In addition, it has been unclear to what extent that Centers have the powers to intervene forcibly in child abuse cases.

There are provisions in the Civil Code for custodial change or transfer of parental power (Art. 766 & 819) and forfeiture of parental power (Art. 834). However, the former provisions cannot be used unless there is a suitable person available to make the application for custody in such cases. And in the latter forfeiture provision, although

the chief of a Child Guidance Center has the right to file for forfeiture, this provision deprives the parent of all rights related to the child (though the parent is still regarded as a parent). The forfeiture provision requires a careful consideration before application is made, and the Center, because of its character mentioned above, often hesitates to use this provision. In practice, it has rarely been used so far.

In the Penal Code, a parent who abuses a child may be accused of homicide or bodily injury resulting in death (Art. 199 & 205), assault and battery (Art. 208), bodily injury (Art. 204), confinement (Art. 220) and so on. Even though the measures in the Penal Code are indeed very powerful ones, punishment of the parents will by no means constitute a true solution to the problem.

Furthermore, since responsive actions under these laws or by their enforcement institutions have done separately from each other, it has been difficult to give abused children consistent protection. Also, in order to remedy the defects in the child protective system, so far certain measures have been taken, such as notices and guidance from administrative offices led by the Ministry of Health, Labor and Welfare primarily, and the establishment of institutions to treat child abuse by local authorities. However, there are also limits to these administrative style guidelines. After all, these approaches are not very effective without facilitating the cooperation between the institutions enforcing the protective laws, but such cooperation has not been satisfactory so far.

Against this social and legal background, the issue of child abuse has begun to be discussed by a specially appointed committee in the House of Representatives. As a result of their discussion, the special committee submitted a bill regarding the 'Prevention of Child Abuse' on May 11, 2000. This bill, after passage through the House of Representatives, was also passed unanimously by the House of Councilors on May 17, and was promulgated on May 24, 2000. The Provisions of the Child Abuse Prevention Act will be discussed below.

Main Provisions:

The purpose of the Prevention of Child Abuse Act is to promote measures regarding the prevention of child abuse by providing specific measures to prohibit child abuse, defining the duties of government

and local authorities, and providing measures for the care of abused children (Art. 1). The major contents of the Act are as follows:

1. Definition of Child Abuse and its Prohibition

In the absence of a legal definition of child abuse before this Act, it had been difficult for Child Guidance Centers to determine whether or not they should intervene in a case. This Act provides that no one may abuse a child (Art. 2). The Act defines child abuse as: any guardian who physically, sexually or emotionally abuses, or neglects a child under his/her care. A 'guardian' is defined as a person exercising parental power, a guardian of a minor, or any other person who takes care of a child at any such time; and a 'child' is defined as a person whose age is less than 18 (Art. 3).

2. Duties of the Government and the Local Authorities

In order to secure the early discovery of child abuse and to give quick and proper protection to an abused child, the government and local authorities are charged with several duties: organizing a preventive system (including reinforcing the linkage among related institutions), ensuring that enough manpower is engaged in protection of a child and improving the quality of such protection, promoting public awareness about child abuse and how to report it, and so forth (Art. 4).

3. Early Discovery and Reporting of Child Abuse and Confirmation of Safe and Temporary Custody of the Child by the Child Guidance Center

This provides that a person who can easily discover child abuse should endeavor to discover child abuse at its earlier stage (Art. 5) and that a person who discovers an abused child must report this to a Center immediately (Art. 6).

This Act lists up the persons charged with the duty of early discovery as: teachers or employees of a school, officers of child welfare facilities, doctors, public health nurses, attorneys, and any other persons that are involved with child welfare matters while performing their jobs. Also, the duty of reporting child abuse cases shall not be barred by provisions relating to the disclosure of professional secrets

as set forth in the Penal Code and other laws (Art. 6, para. 2).

When a Child Guidance Center receives a report, the chief of the Center should try to confirm the safety of the child and, if necessary, take temporary custody of the child (Art. 8). The period of this temporary custody is to be two months in principle (Sch. 3).

4. Investigation by Entering a Residence and Police Assistance

When a prefectural governor recognizes that there is a probable cause of child abuse case, he or she may have a staff member of a child welfare center enter the residence of the child and make necessary investigations or inquiries (Art. 9). According to the Child Welfare Law in the past, an investigation involving entering the residence was allowed only if there was a need to admit the child to the Child Welfare Facility. In this newest Act, the investigation is allowable if there is probable cause of abuse as defined by virtue of this provision. When an investigation is necessary, a staff officer may request the police to assist the investigation (Art. 10). Assistance by the police is also allowable in order to confirm the safety of and/or allow temporary custody of a child under Article 8.

5. Obligation to Receive the Guidance from the Child Welfare Officer

When counseling/guidance by Child Welfare Officers is ordered for a guardian abusing a child, the guardian is required to receive counseling, and if the guardian does not voluntarily agree, a local governor may then advise the guardian to undergo counseling (Art. 11). Although the guardian cannot be forced into guidance, the governor has to consult the Welfare Officer and others in deciding whether or not to revoke a measure admitting a child to the facility (Art. 13). As a result, the guardian is motivated to follow guidance under this provision.

6. Restrictions of Communication and Visitation to a Child in the Home

If a measure of admittance to a child welfare facility of an abused child is made upon an order of a Family Court in spite of the

guardian's opposition, the chief of the local Center or facility can prohibit the guardian from communicating or visiting the child (Art. 12). This provision is introduced in order to deal with parents who demand to take back the child importunately.

7. Matters Regarding Parental Power

Though this is a matter of course, in order to present clearly that child abuse must not be allowed by the excuse that it is needed for discipline in the family, this Act provides that a person exercising parental power must pay due attention when disciplining his or her child and cannot indemnify charges of assault and battery and bodily injury by reason that he or she has parental right (Art. 14). This Act also provides that the system of forfeiture of parental power prescribed in the Civil Code should be applied properly (Art. 15).

Editorial Note:

The "Child Abuse Protection Act" was enacted through legislation introduced by a Diet member, Known as "*Giinrippō*", having the purpose of dealing with this issue due to the rapid increase in social concern mentioned above. As a result, there were no full and thorough discussions in both Houses of the Diet, and this Act focuses more on social reform than on legal integrity. Therefore, some have said that this Act is a codification of some administrative guidelines that have been present before, and call into question the effectiveness of the Act because it fails to provide legal consistency with other existing statutes and leaves many ambiguous provisions. For example, Article 4, providing for the duties of the government and local authorities, merely charges them with the duty to "make an effort", and it is unclear whether or not the professionals mentioned in Article 5 are clearly charged with reporting abuse cases. Moreover, Article 12, providing restriction of communication and visitation, does not clearly define its interaction with the provisions in the Civil Code. The term "should operate properly" in Article 15 also seems quite ambiguous.

Even though some aspects of the Act seem questionable, the Act still has great meaning for those involved with child welfare in that it gives a clear legal basis to prior practices based on administrative no-

tices and allows them to act on these bases. The Act has meaning as an important footing for the future, particularly by defining child abuse and declaring its prohibition, providing a legal framework regarding child protection, such as reporting and investigating by entering a residence, and by clearly prescribing the duties of the government and local authorities.

The Act further provides that some measures for the prevention of child abuse are to be monitored for about three years from the date when this Act came into force and that necessary amendments are to be made based upon the results (Sch. 2). Therefore, we need to carry on vital discussions regarding questions that remain in this legislation such as its legal consistency and assurance of due process, for future reform.

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5. Civil Procedure

New Code of Civil Procedure

Law No. 109, June 26, 1996 (Effective on January 1, 1998).

Background:

The New Code of Civil procedure was a total reform of the Code after the 1926 Amendment concerning the procedure for judgement.

The purpose of the reenactment is to make the procedure easy to access and understand for ordinary citizen, and to set up regulations fit for demands of the modern society.

The main points of the New Codes are as follows.

1. Revision of the Old Code

The New Code consists of 8 chapters, 400 sections and 27 schedules. New Rules of Civil Procedure, become effective on the same day,