

# Globalization and Change of Migration-Related Laws in Korea: Focusing on the Change of Marriage Migration-Related Laws\*

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## Abstract

*In this paper I tried to review the change of marriage migration-related laws and find out the characteristics and meanings of the changes. I also tried to analyze the social context of these changes and suggest the relationship between the law and society. As objects of analysis I chose Nationality Act, Act on the Regulation of Marriage Brokerage Agencies, Multicultural Family Support Act, and Government Instructions on Social Integration Program.*

*The changes were characterized as 1) changes from laissez faire to more regulations, 2) changes from denationalization of reproduction to re-nationalization of reproduction, and 3) changes from pure blood ideology to multiculturalism and social integration.*

*When seen from a macroscopic perspective, most of these changes turned out to be the government's response to risks of the first modernity, that is, side-effects of rapid industrialization and urbanization, on the one hand, and risks of the second modernity, that is, globalization and individualization, on the other. However, when seen from a more microscopic perspective, there were government's role and initiative in making these multicultural policies.*

*In this sense it can be concluded that the relationship between the law and society, as far as the marriage migration-related laws are concerned, seems to be one of interrelationship between law and society, showing "society first, and law follows" relationship on the one hand, and the government taking an initiative relationship on the other.*

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## I. Introduction

This paper is aimed to review the changes of migration-related laws in Korea, particularly, marriage-migration-related laws and through this to examine the emergence of social integration policy for marriage migrants in Korea from a globalization perspective. As a result I hope I can suggest the relationship between the society and law.

The reason I chose the marriage migration-related laws is because marriage migration in Korea is increasing recently and can be considered as good recent examples showing the relationship between the society and law in the context of globalization. I also chose the topic because the Korean government's policy for social integration is specifically targeted for marriage migrants.

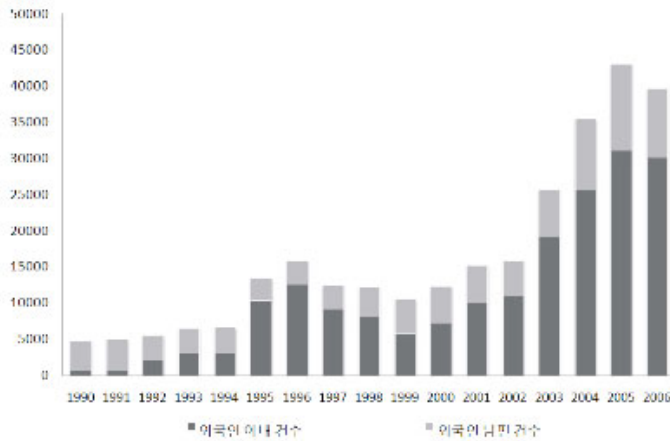
The research questions are as follows: First, how did the marriage migration-law change in Korea? I will focus on some of the marriage migration-related laws and review their changes. Second, what are the characteristics and meaning of these changes? Third, why did the marriage migration-laws change as it did? What is the social context of these changes? Fourth, what is the relationship between the law and society? Does the society change first, and the legal change follows to fill the gap, or, do the laws change first to lead the social changes?

## II. Background<sup>1)</sup>

According to statistics, transnational marriages are steadily increasing in Korea since the 1990s and began to rapidly increase since 2003 (figure 1). Thus

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1) Young-Hee Shim, *Transnational Marriages in Korea: Trends, Issues, and Adaptation Process*, 22(1) GENDER & SOC'Y (2008); Young-Hee Shim et al., *Adaptation of the Women Marriage Migrants and Support Measures: focusing on Filipino and Vietnamese Migrant Women*, HANYANG INST. FOR WOMEN OF HANYANG UNIV. & KOREA FOUND. FOR WOMEN (2007) (Korean); Young-Hee Shim et al., *Adaptation Process and Emergence of Transnational Identity among Women Marriage Migrants*, KOREA FOUND. FOR WOMEN (2008) (Korean); SANG-JIN HAN & YOUNG-HEE SHIM, *WORLD AT RISK AND THE FUTURE OF THE FAMILY* (2010) (Korean).



Number of foreign wives (■), Number of foreign husbands (■)

**Figure 1.** International Marriages, 1990-2006.

the proportion of the international marriages was only 1.2% in 1990, but reached 13.6% in 2005, and 11.9% in 2006. Foreigners who reside in Korea are more than one million since 2007.<sup>2)</sup> Among these marriage migrants constitute 10.4% (110,362).

Particularly, the marriages between Korean men and foreign women are rapidly increasing. In the early 1990s most of the international marriages were between Korean women and foreign men. However, since the mid-1990s this began to rapidly change. The proportion of international marriages between Korean men and foreign wives were 46% of all the international marriages in 1994, increased to 77% in 1995, decreased during 1998-2000, and increased again since then and still keep the trend as the main stream in international marriages.<sup>3)</sup>

2) The number of foreigners residing in Korea by the end of 2007 amounted to 1,066,273, which takes 2.2% of the total population. Of the 2.2%, 21.9% (233,699) are Koreans living overseas visiting or working in Korea, 15.9% (169,988) are less skilled workers, 10.4% (110,362) are marriage migrants, 5.8% (61,836) are students, 2.7% (29,081) are professional workers, 1.54% (10,460) are permanent residents, and 0.76% (8,109) are investors. See Ki-Ha Kim, *Role of Law for Social Integration: Policy for Foreigners Staying in Korea*, JUSTICE 106, 218-237 (2008) (Korean).

3) Shim, *supra* note 1.

Also the nationality of the foreign wives is changing and getting more diverse. Since there increased many bachelors in the rural areas who could not find their spouses in Korea, the marriage of the bachelors in the rural areas became a serious social problem. Thus local governments, religious groups, and marriage mediating agencies began to arrange international marriages for them.

In the 1990s most of the foreign brides came from Yanbian area in China. This was mostly because they share the same ancestors with Koreans and can speak Korean. Some local governments made effort to matchmake the bachelors of the rural areas through agreements with the Chinese local government or civilians.<sup>4)</sup> The proportion of the Chinese wives has been the most among the foreign wives, even though decreasing recently, 70% in 2001, 66.2% in 2005, and 48.4% in 2006. Also during this period international marriages between Korean men and the Filipino women also increased through the promotion by the Unification Church, even though decreasing in proportion, from 7.9% in 2002 to 3.8% in 2006. These decreases have something to do with the diversification of the nationality of foreign wives.<sup>5)</sup>

Since 2000 the nationality of the foreign wives became more diverse and expanded to Vietnam, Thailand, Mongol, Uzbekistan, etc. The rapid increase of Vietnamese wives occurred in the context of this diversification trend. Proportion of Vietnamese wives was only 1.3% in 2001, but rapidly increased to 9.6% in 2004, 18.7% in 2005, and 33.5% in 2006. This is the second most proportion next to Chinese wives (48.4%).<sup>6)</sup>

This diversification trend probably has something to do with the revision of “the Act on the Regulation of Marriage Brokerage Agencies.” As the establishment of marriage brokerage agencies became easy as a free enterprise, they rapidly increased in number, and so did the nationality of the foreign wives.

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4) Hyekyung Lee, *Problems of Marriage Migration and Marriage Migrant Families*, 28(1) KOREAN DEMOGRAPHY (2005).

5) Shim, *supra* note 1.

6) *Id.* There is a tendency that women from certain countries are favored, and this is for their skin color or for their attitude.

### III. The Change of Marriage Migration-Related Laws

#### 1. The Position of Marriage Migration-Related Laws among the Migration-Related Laws

Let me first explain what is “the migration-related laws” and what do they include. They refer to the laws about the foreigners in Korea and they include all aspects of foreigners’ life in Korea such as entry and exit control, stay, work, and residence, legal status, citizenship, and nationality. And some of these laws are targeted toward foreigners in general and others are more specifically targeted toward different groups of foreigners such as foreign workers, marriage migrants, overseas Korean, etc. More specifically, they can be grouped into the following three categories: foreign workers-related laws,

**Table 1.** Change of Migration-Related Laws in Korea

	Foreign workers-related policies and laws	Marriage migrants-related policies and laws	Overseas Koreans-related policies and laws
1990s	ITTP (1991) ITP (1993) WATP (1998)	Revision of Nationality Act (1997) Marriage Brokerage as a Free Enterprise under new Family Rite Act (1999)	Act on the Entry and Exit and Legal Status of Overseas Koreans (1999)
2000s	EPP(2003) Act on Foreign Workers’ Employment (2003)	Act on the Regulation of Marriage Brokerage Agencies (2007) Basic Act on the Treatment of Foreigners in Korea (2007) Multicultural Family Support Act (2008) Government Instructions on Social Integration Program Courses (2008)	Revision of Act on the Entry and Exit and Legal Status of Overseas Koreans (2004, 2008)

Notes: ITTP: Industrial Technical Training Program

ITP: Industrial Training Program

WATP: Work After Training Program

EPP: Employment Permit Program

marriage-migrants-related laws, and overseas Koreans-related laws.

Included in the foreign workers-related laws and policies are Industrial Technical Training Program (ITTP) (1991), Industrial Training Program (ITP) (1993), Work After Training Program (WATP) (1998), Employment Permit Program (EPP) (2003), and Act on Foreign Workers' Employment (2003). Included in the marriage migrants-related laws and policies are revision of Nationality Act (1997), Family Rite Act regarding marriage brokerage (1999), Act on the Regulation of Marriage Brokerage Agencies (2007), Basic Act on the Treatment of Foreigners in Korea (2007), Multicultural Family Support Act (2008), and Government Instructions on Social Integration Program Courses (2008). Included in the overseas Koreans-related laws are Act on the Entry and Exit and Legal Status of Overseas Koreans (1999), Revision of Act on the Entry and Exit and Legal Status of Overseas Koreans (2004, 2008). (cf. table 1)

Among these I will focus on the marriage-migrants-related laws. The reason I focus on these laws is because they comprise more laws than the other two groups, and also because they are the main target of government policy among the foreigners, and also because they are the main target of multicultural and social integration policy.

## 2. *Emergence of New Migration-Related Laws*

The Korean government policy for marriage migrants started as a response to the "risks" or social problems which emerged as side-effects of the first modernity.<sup>7)</sup> With the government-initiated rush-to industrialization and rapid urbanization, there arose such problems as uneven sex ratio, and problem of "unmarriageable rural bachelors" in rural areas. Besides, the government of the sending countries used policies encouraging export of women labor including international marriage.<sup>8)</sup>

With the rise of the problem of the "unmarriageable rural bachelors" some local Korean governments tried to resolve the lack of brides by recruiting them from abroad. Thus they began to arrange transnational marriages for

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7) Young-Hee Shim & Sang-Jin Han, *Family-Oriented Individualization and Second Modernity: An Analysis of Transnational Marriages in Korea*, 61 *SOZIALE WELT* (forthcoming 2010).

8) *Id.*

such people. Some local governments made effort to matchmake the bachelors of the rural areas through agreements with the Chinese local government or civilians.<sup>9)</sup>

Korean government also planned policy and legislated and/or revised the migration-related laws to support the marriage migrants to stay, work, and live in Korea. At first it allowed women marriage migrants who got married with a Korean to get a nationality just with the marriage. However, in 1997 it revised the Nationality Act so that a marriage migrant who got married with a Korean can get a Korean nationality after two years' residence in Korea after the marriage and with the permission of naturalization by the Minister of Justice.

Immigration Control Act was revised to support the marriage migrants to stay, work, and live in Korea. Thus a marriage migrant who gets married with a Korean is issued with a "national's spouse" visa (F-2-1) and usually given one year of stay. Those who have F-2-1 visa can get employment freely for all kinds of jobs regardless of professional or non-professional jobs with the "Stay and Activity Permit" from the Ministry of Justice. When the period is over, marriage migrants should go to the district immigration office of the residence with the spouse, and have to apply for the extension of the stay.<sup>10)</sup>

Also marriage migrants who are not yet naturalized could become a beneficiary of the four insurance, i.e., national pension plan, national health insurance, unemployment insurance, and industrial accident insurance. The conditions are different according to which country they are from.<sup>11)</sup>

Besides the above mentioned, the Korean government established a Committee for Comprehensive Policy for Multicultural Family in 2005, and further legislated and revised related laws. Act on the Regulation of Marriage Brokerage was legislated in 2007. Basic Act on the Treatment of Foreigners in Korea was also legislated in 2007. Multicultural Family Support Act was legislated in 2008, and with that many multicultural family support Centers were established to support the transnational marriage families. And

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9) Hyekyung Lee, *supra* note 4.

10) Dong-Hoon Seol, et al., *A Research on the Conditions of Women Marriage Migrants in Korea and Measures for Health and Welfare Support*, MINISTRY OF HEALTH AND WELFARE (2005).

11) *Id.*

Government Instruction on Social Integration Program was operated since 2008.<sup>12)</sup>

In the following I will discuss some of the marriage migration-related laws one by one.

### 3. *Nationality Act before and after 1997 Revision*

#### 1) *The Nationality Act before 1997 Revision*

The Nationality Act was legislated in 1948 and was kept with minor revisions in 1962, 1963, and 1976. It went through significant changes in 1997. Among the revisions those related with women migrants are two things: first, the gender equality in nationality act; second, abolition of preferential treatment in the acquisition of nationality through marriage.

First, the nationality act before 1997 revision was discriminatory in terms of gender. It was patrilineal and husband-centered in principle and discriminated against women in the acquisition of nationality by birth or marriage.<sup>13)</sup> For example, when one is born, the criterion to acquire Korean nationality depended on whether his/her father has Korean nationality or not, not his/her mother's nationality (art. 2). Also when a Korean man gets married with a foreign woman, the foreign woman could acquire Korean nationality automatically with marriage (art. 6). However, it is not so when a Korean woman gets married with a foreign man. The foreign husband had to wait for three years to get permission.

Thus the nationality act before 1997 revision was criticized for being discriminatory in terms of gender. In this regard Korea reserved the optional protocol 9 of the Convention for the Elimination of All Discriminations against Women (CEDAW) until then. However, it collided with the article on the rights to equality in the article 11 of the Korean Constitution and in the article 3 of the International Covenant on Civil and Political Rights (equal rights of men and women).

Second, compared with the migrant workers, this automatic acquisition of nationality for foreign brides certainly is a preferential treatment. Government

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12) Shim & Han, *supra* note 7.

13) Dong-Hyun Seok, *Revision of Nationality Act*, 4(2) SEUL INT'L L. RES. (1997) (Korean).



policy is open to marriage migration, but closed to labor migration. Migrant workers have enormous limitations in their stay: they could stay in Korea only for a limited period of time and if they change the workplace, their stay becomes illegal. However, toward the women marriage migrants, the government is very open and special. It even tries to overcome strong ideology of one nation, one pure blood

Why is this so? Considering the issue of “rural bachelors” and “low-fertility crisis” this is understandable. It is because they do the reproductive works which Korean women do not want to do. The women marriage migrants are considered as the “daughter-in-laws” who will succeed the family line by giving birth to babies, and thus next generation Koreans. They also take care of the parents-in-law which the Korean welfare system cannot yet deal with. Toward them the government used open, de-nationalization policy for reproduction.

## 2) *The Nationality Act After 1997 Revision*

As discussed above, the nationality act before 1997 revision was criticized for being discriminatory in terms of gender. And the Nationality Act was revised in 1997. In acquisition of nationality by marriage, both the foreign wife and foreign husband, regardless of gender, could get Korean nationality with an approval of naturalization by the Minister of Justice which requires at least two years’ married life and residence in Korea or at least three years’ marriage and one year’s residence in Korea (art. 6).

This is a change toward gender equality, on the surface. However, the reality is that it was designed to bar the “disguised marriages” in international marriages which were a social issue in the late 1990s. For example, many Korean Chinese women wanted to migrate to Korea. However, labor migration is very difficult and many choose marriage migration. In the late 1990s some of the Korean Chinese brides disappeared as soon as they got married and got the citizenship, and they were blamed for sham marriages. This means that they got married for another reason. Since Korean Chinese can speak Korean well, they can get jobs easily in service sectors. Thus the law was revised to prevent the sham marriages.

When we consider the fact that international marriages between Korean men and foreign wives were the dominant trend, and most of the so called “disguised marriages” were between Korean men and Korean Chinese

women, it was to bar these Korean Chinese women to come to Korea with other purposes. This shows reinforcement of international marriage and re-nationalization of politics.

#### 4. *Act on Regulations of the Marriage Brokerage Agencies*

##### 1) *Marriage Brokerage As a Free Enterprise (1999)*

The government policies friendly to international marriage provide a good environment for international marriage brokerage agencies. Some local government directly arranged international marriages, but there were limitations. Thus international marriage brokerage agencies began to flourish. Usually international marriage brokerage agencies introduce the brides and bridegrooms of Korea and sending out countries, arrange meetings, and carry out documents processing for them. More specifically, Korean-side brokers take Korean men to a prearranged overseas site where potential brides gather, and altogether it takes only a week or so for a man to pick the bride and have a simple wedding ceremony. Then the man comes back to Korea alone and applies for a foreign spouse visa on behalf of his wife.<sup>14)</sup> Brokerage advertisements are seen everywhere in Korea, in street placards, brochures, and newspapers. Many of international marriage migrations are realized through the intervention of marriage brokerage agencies.

Until 1998 the international marriage brokerage agencies were regulated by the old Family Rite Act which was legislated in 1969. But it was abolished in 1998 and a new Family Rite Act was enacted from 1999. That is, such agencies could be established as a free enterprise with almost no regulation according to the new Family Rite Act. This means that such agencies became a free business without any sanction since 1999.<sup>15)</sup> As a result the number of such agencies increased and the size of international marriages did so as well.

However, some marriage brokerage agencies used illegal means such as

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14) Dong-Hoon Seol, *Migrants' Citizenship in Korea: With Focus on Migrant Workers and Marriage-Based Immigrants*, Paper presented at The International Conference on Human Rights of Migrants and Multicultural Society, National Human Rights Commission of Korea, Seoul, Nov. 10-12, 2008.

15) *Id.*

providing false information, forging documents, bribing the officials, etc.<sup>16)</sup> This is so because international marriage brokerage is a highly profitable business. Many get married through marriage brokerage agencies and they have to pay a big money for the arrangement. Thus later the marriage brokerage agencies working for profits underwent changes toward more regulations (2007).

## 2) *The Legislation of International Marriage Brokerage Act (2007)*

As mentioned above, there arose many serious problems among some marriage brokerage agencies. They used illegal means such as providing false information, forging documents, bribing the officials, etc.<sup>17)</sup> Also they used exaggerated advertisement, and showed many problems in introduction meetings for arranged marriages, in some cases reaching human rights violations. Thus criticisms against marriage brokerage agencies soared among women movement organizations in Korea. Thus the government legislated the law for regulations.

The Act on Regulations of the international marriage brokerage was legislated in 2007 and activated in June 2008. In February 2005, Congressman Kim Chun-jin initiated the law as an effort to deal with “the increasing abuses and exploitations caused by disguised marriages, scam marriages, and false information as the result of increasing international marriages,” and the law was passed.<sup>18)</sup>

The backbone of the newly legislated law is that brokerage agencies should report (art. 3), register (art. 4) and abide by local laws (art. 5 to 14), no fake or bluffed information about marriage can be advertised, and the brokerage is responsible for compensatory payment, etc. As a result of the law, once common advertisements like “Vietnamese women never run away” can no longer be seen on the street of Korea. Thus there increased more regulations. In addition, the establishment of the marriage brokerage agencies

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16) Seol, et al., *supra* note 14.

17) *Id.*

18) Hyun-Mee Kim, *Integration for Whom?: Marriage Migrant Women Policies in Korea and Patriarchal Imagination*, Paper presented at The International Conference on Human Rights of Migrants and Multicultural Society, National Human Rights Commission of Korea, Seoul, Nov. 10-12, 2008.

changed from a free enterprise system with no regulation to registration system: before they can just establish a marriage brokerage agency freely, now they have to register and must meet the conditions and regulations.

The new law was a needed one, on the one hand. However, there are some criticisms on it. The law is criticized as problematic because it stresses the “consumer rights” of Korean men instead of protecting migrant women from false information and preventing breakdowns in marriages. For example, according to article 55 of the Basic Consumer Law, the ‘consumer’ can be given prompt relief according to the Consumer Law when harmed in the course of using the products or services of providers.” Here, the ‘consumer’ is considered the Korean who wishes to marry, and the ‘provider’ the broker, and the ‘products or services’ the migrant woman. If the migrant woman divorces the spouse and leaves home, it is considered as “damage to a consumer.”<sup>19)</sup> Thus it involves commercialization of migrant women, which is a violation of human rights.

With these criticisms the marriage brokerage law was revised in May, 2010. The revision included the following among others: the contract was extended from a written one to electronic one (art. 10), and the brokerage agencies should provide personal information such as the past marriage record, health status, occupation, criminal record such as sexual violence and domestic violence, to the user and the counterpart of the brokerage (art. 10-2), and also should provide translation and interpretation service for smooth communication (art. 10-3). And if they violate these, they can be ordered to stop operation or their license can be revoked. The revision certainly included more regulations

##### *5. Basic Act on the Treatment of the Foreigners in Korea (2007)*

The Basic Act on the Treatment of Foreigners in Korea (“Basic Act hereafter”), which was legislated in 2007, was intended to provide basic principles and a comprehensive system of policy for “social integration” of foreigners in Korea.<sup>20)</sup> The objective of the Basic Act is “to help foreigners in

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19) *Id.*

20) Kim, *supra* note 2.

Korea to adapt to Korean society and use the individual's ability fully, and make Koreans and foreigners in Korea understand and respect each other and contribute to the development and social integration of Korea." (art. 1)

An important content of the Basic Act was to establish basic plans for foreigners in Korea. According to the Basic Act, the Minister of Justice, in consultation with the Chief of the Government Administration, should establish basic plans for foreigners in Korea every five years (ch. 2, art. 5).

Other important content is about the treatment of foreigners in Korea (ch. 3). It includes: 1) protection of human rights of foreigners in Korea (art. 10), 2) support of social adaptation of foreigners in Korea (art. 11), 3) support of marriage migrants and their children (art. 12), 4) treatment of permanent residents (art. 13), refugees (art. 14), and professional foreigners (art. 16), etc.

Still other content is about the making of the atmosphere of living together for Koreans and foreigners in Korea (ch. 4). It includes promoting understanding of multiculturalism (art. 18), designating May 20th as a day of cosmopolitan, and the following week as a week of cosmopolitan (art. 19).

The Basic Act is significant in that it is the first law declaring the social integration of multicultural families. However, as a Basic Act, it has a limitation. It does not go beyond a declaration. It does not have specific content.

In addition, the Basic Act is supposed to be a comprehensive law for foreigners in Korea. As its objects, it includes not only marriage migrants, but also permanent residents, refugees, professional foreigners, etc. However, in reality, it was focused on marriage migrants. That is, the social integration is very limited in its scope.

## *6. Multicultural Family Support Law (2008)*

The Multicultural Family Support Law, which came into effect in September 2008, aims at providing broad social service to migrant women and their children, to realize the principles declared in the Basic Act. It includes 1) raising social awareness of multicultural issues (art. 5), 2) support and orientation for newly arrived foreign wives (art. 6), 3) support for equal family relationship (art. 7), 4) support for victims of domestic violence (art. 8), 5) support for pre- and post-natal health care (art. 9), 6) support for children of international marriages in schools (art. 10), 7) providing multi-language

service to foreign wives (art. 11), and 8) establishing multicultural family support centers (art. 12), etc.

Social support for migrant women is conceptualized as life-cycle services.<sup>21)</sup> Women are thought to go through life-cycle 1: early years of migration, family forming stage, life-cycle 2: pregnancy, birth stage, life-cycle 3: child-raising stage, life-cycle 4: entering labor market stage. The women are provided service according to each life cycle.<sup>21)</sup>

This act, which is based on the life-scripts of Korean middle class women, is being advertised as systematic state support of migrant women, but it supposes that all marriage migrant women live the kind of life 'expected from the society.' Migrant women, regardless of their career goals, educational background, or work experience, are regarded as going through the same life cycle as the Korean family early upon their arrival at Korea or are equalized as unsophisticated entities.<sup>22)</sup>

However, this law can be considered problematic and unrealistic in conceptualizing women marriage migrants as undergoing the same life-cycle. In reality, many migrant women are remarried, and there are also many women who do not have children because of their husband's children. Some enter the labor market earlier because of their economic situations. More than other, women experience stages simultaneously, not independently.

Such an unrealistic conceptualization of migrant women and their life-cycle can even justify discrimination against those who do not fit into the norm. One example is delaying the granting of citizenship in cases of childless migrant women because they 'have not been thoroughly adjusted yet'. If migrant women delay the birth of children, (even though many migrant women decide to have children after their family reaches a certain degree of economic stability,) they are accused of 'disguised marriages'.<sup>23)</sup>

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21) Nansook Park, *Experience of Migration and Multicultural Policy in Korea*, Paper presented at The International Conference on Human Rights of Migrants and Multicultural Society, National Human Rights Commission of Korea, Seoul, Nov. 10-12, 2008 (Korean).

22) Kim, *supra* note 18.

23) *Id.*

### 7. *Government Instruction on Social Integration Program Courses (2008, 2009)*

The Government Instruction on Social Integration Program Courses was issued in 2008, hotly debated, and was revised the third time in 2009.<sup>24)</sup>

The Social Integration Program consists of certain Korean language courses and “Understanding Korean Society” courses. The main target of the program is marriage migrant women. They have to take 220 hours of classes if they are novices.<sup>25)</sup> Once this program is completed, they can earn a citizenship without citizenship acquisition test, since it proves the women migrants are “well grounded” as potentially good Korean citizens.

Thus it is linked with acquisition of nationality. It exempts migrants who wish to settle in Korea from the citizenship acquisition test when s/he finishes certain Korean language courses or “Understanding Korean Society” authorized by the Minister of Justice. Before, it was not required for the marriage migrants to take the social integration courses. The Ministry of Justice says the program is intended to prevent “the increasing maladjustments of marriage migrants and naturalized citizens” and “social costs that might be caused if migrants and their offspring become socially and economically vulnerable when cut off from education and job opportunities.”

Even though there are opinions that the Government Instruction on Social Integration Program Courses will actually have a positive effect over marriage migrant women, there also are criticisms on this program. Among these I will discuss two. The first is that the social integration program is criticized for not being a policy based on multiculturalism respecting other cultures, but making of a Korean based on assimilation. The second is that the mandatory taking of 220 hours of classes is unrealistic.

First, many claim that for genuine social integration not only migrants, but also Koreans should be the target of education (National Network for Women Migrants, 2008). More specifically, the discourse that lies underneath social

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24) It was issued on March 12, 2008 and revised on November 7, 2008, April 16, 2009, and August 26, 2009.

25) The social integration program divides Korean language ability to 5 levels, and allows one to skip levels through taking differentiated tests.

integration is problematic because it fosters the notion of nationality based on linguistic homogeneity by making women learn Korean for two years after their arrival. The Social Integration Program turned the Korean language into something that should be blindly pursued in order to acquire citizenship. Speaking one's own language is a symbol of self-respect and self-identity. But Korea's strong language-nationalism sees the migrants' maintenance of cultural identity through speaking their own language, as something that should be given up for their quick adjustment. This severely harms migrant women's sense of cultural identity, which is fundamental to their self-esteem.<sup>26)</sup>

The second is that the mandatory taking of 220 hours of classes of this program is unrealistic, considering the situation of many migrant women in rural areas who are burdened with heavy reproductive and productive labor. The heavy burden might result in migrant women dropping out of the social integration program, which would in turn lead to social denouncement of their irresponsibility and incompetence. Ultimately, the migrant women who drop out or refuse to be integrated will have difficulty in getting citizenship and stay, bothering migrant women from seeking stable settlement.

#### **IV. Characteristics and Meaning of these Changes: Toward More Regulations, Re-Nationalization, and "Social Integration"**

Through a discussion of the changes in marriage migration-related laws we can find the following characteristics and meanings. They are changes from pure blood to multiculturalism and social integration, changes from *laissez faire* to more regulations, and changes from de-nationalization to re-nationalization.<sup>27)</sup>

First, the changes from *laissez faire* to more regulation can be seen in the change of Nationality Act, and the Act on the Regulation of Marriage

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26) Kim, *supra* note 18.

27) See RHACEL SALAZAR PARRENAS, *SERVANTS OF GLOBALIZATION: WOMEN, MIGRATION AND DOMESTIC WORK* (2001); Kyung-Soon Park & Do-Hyun Yoon, *Globalization and Immigration Policy: Focusing on the "Immigration Act of Germany in 2005*, 19(2) KOREA-F.R.G. SOC. SCI. J. (2009) (Korean).



Brokerage Agencies. In the Nationality Act, the acquisition of nationality only with marriage on the part of women marriage migrants (before 1997) was changed into a period required for naturalization of two or three years' of marriage (after 1997). Later with the Government Instructions on Social Integration Programs, women marriage migrants now have to take 220 hours of courses in Korean language and "Understanding Korean Society." This certainly means more regulations on the part of women migrants.

In the Act on the Regulation of Marriage Brokerage Agency, the law was changed from a free enterprise with no regulation under Family Rite Act (1999) to registration system in 2007. The marriage brokerage agencies now have to abide by local laws and are under more regulations. Thus, they have to register, and in order to register they have to meet many conditions. Also if they use illegal means such as providing false information, forging documents, bribing the officials, use exaggerated advertisement, and have problems in introduction meetings for arranged marriages, in a word, if they do not abide by the laws, they can be punished with sanctions. And it was further reinforced in 2010 revision. This certainly means more regulations.

Second, the changes from de-nationalization to re-nationalization can be seen in the Nationality Act, Multicultural Family Support Act, and Government Instructions on Social Integration Program. As discussed above, the revision of the Nationality Act in 1997 was to reinforce the conditions of naturalization from just marriage to two or three years' married life. This was to bar the sham marriages. But they were specifically targeted to Korean Chinese women migrants. As a result, the proportion of Korean Chinese women among the women marriage migrants significantly decreased. This is a trend away from de-nationalization toward re-nationalization.

The Multicultural Family Support Act of 2008 assumes that women marriage migrants will make a multicultural nuclear family, following the same life-cycle as the Korean middle class women. Also the requirement of 220 hours of the Social integration program courses means that assimilation to Korean language and society is important. The implicit ideology is to make women marriage migrants just like Korean women in their thinking, in their everyday life, and in their child nurturing. This also can be considered as re-nationalization policy.

Third, the change from pure blood ideology to multiculturalism and social integration can be seen in the Basic Act on the Treatment of Foreigners in

Korea of 2007 and Multicultural Family Support Act of 2008. The word “multiculturalism” and “social integration” appeared in these laws. As mentioned above, the objective of the Basic Act is “to help foreigners in Korea to adapt to Korean society and use the individual’s ability fully, and make Koreans and foreigners in Korea understand and respect each other and contribute to the development and social integration of Korea.” (art. 1) The objective of the Multicultural Family Support Act is “to help the members of a multicultural family to live a stable family life, and to contribute to improve their quality of life and social integration.” (art. 1). Both focus on social integration. The only difference is that while the former is a basic act declaring the basic principles of treatment of foreigners in Korea, the latter is more specific.

The Multicultural Family Support Act provides broad social service to the members of “multicultural families,” that is, migrant women and their children. It includes support and orientation for newly arrived foreign wives, support for children of international marriages in schools, providing social welfare to foreign wives, support for victims of domestic violence, raising social awareness of multicultural issues, making a comprehensive project, and establishing multicultural family support centers, etc.

Thus the change can be summarized into the following three periods. The first period can be characterized as *laissez faire* or denationalization of reproduction and covers the period before the 1997 Nationality Act revision. The second period can be characterized as more regulation or renationalization of politics and covers the period after the 1997 Nationality Act revision. The third period can be characterized as social integration and multiculturalism and covers the period after the 2007 legislation of the Basic Act (cf. Table 2). The characteristics of the second and the third period somewhat overlap. Maybe the manifestation of multiculturalism and social integration could be an overt aspect, while the renationalization of politics could be considered as a covert aspect of these laws. The Act on the Regulation of Marriage Brokerage Agencies could be considered as a delayed manifestation of renationalization of politics.

**Table 2.** Characteristics of Legal Changes by Period

Period	Government Policy	Related laws and policies
Period 1 Before 1997	Laissez faire or De-nationalization of Reproduction	Nationality Act (before 1997) Marriage Brokerage as a free enterprise under new Family Rite Act) (1999)
Period 2 After 1997	More Regulation or Re-nationalization of Politics	Nationality Act (1997 Revision) Act on the Regulation of Marriage Brokerage Agencies (2007)
Period 3 After 2007	Policy Claiming Multiculturalism and Social Integration	Basic Act on the Treatment of Foreigners in Korea (2007) Multicultural Family Support Law (2008) Government Instructions on social Integration Program (2008)

## V. What Are the Social Context of these Legal Changes?

How could Korea, a one-nation country which emphasized “pure blood” of Korean people turned so easily to policy promoting international marriage? Why could the women marriage migrants whose proportion among the foreigners residing in Korea is low, only 10.4%, become the main target of multiculturalism and social integration? In answering these questions, I will rely on Beck’s theory of second modernity.<sup>28)</sup>

According to Beck, second modernity is a civilizational condition in which various (mostly negative) “side-effects” of (first) modernity add up to a qualitatively different situation in which the fundamental values of first modernity are still respected, but have to be pursued with radically different social means and institutions under a cosmopolitan paradigm.<sup>29)</sup> Utilizing this

28) ULRICH BECK, *RISK SOCIETY: TOWARDS A NEW MODERNITY* (Mark Ritter trans., 1992); ULRICH BECK & ELISABETH BECK-GERNSHEIM, *INSTITUTIONALIZED INDIVIDUALISM AND ITS SOCIAL AND POLITICAL CONSEQUENCES* (2002), Ulrich Beck & Edgar Grande, *Varieties of Second Modernity: Extra-European and European Experiences and Perspectives*, 61(3) *BRIT. J. SOC.* (forthcoming 2010)

29) *Id.* Beck disputes “methodological nationalism” in social theory and analysis and instead advocates “methodological cosmopolitanism” in order to reflect international and global processes by which the nature of modernity in late-modernizing societies is critically determined.

theory, I argue that Korean government tried to respond to risks of two kinds.

### 1. *Industrialization and the Risks of the First Modernity*

The first kinds of risks are risks resulting from the side-effects of “the first modernity”,<sup>30)</sup> or government-initiated rush-to industrialization and rapid urbanization.<sup>31)</sup> At the background of the increase of transnational marriages is the issue of “unmarriageable rural bachelors.” The emergence of “unmarriageable rural bachelors” is a result of rapid industrialization, rapid urbanization, and the diffusion of the idea of gender equality. However, in the family which was the backbone of industrialization, gender labor drain and uneven sex ratio in rural areas. Thus the rural families which served as the supply of labor power for industrialization in urban areas are in the crisis of not reproducing themselves.<sup>32)</sup>

With the urbanization there increased rural bachelors who could not find their spouses in Korea. The unequal sex ratio in the rural areas in Korea is related with the issue of rural bachelors. With the industrialization and urbanization many young girls and women left rural areas to make money for their brothers. The sons, even though they are more benefited than the daughters, cannot leave but stay in the hometown, because they are supposed to succeed the home enterprise which is mostly agriculture, support their parents and live together with them, since they are considered as the successor of the family, according to the patriarchal system of Korea.<sup>33)</sup>

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30) *Id.*

31) Sang-Jin Han & Young-Hee Shim, *Redefining Second Modernity Applicable for East Asia: A Critical Assessment*, 61(3) BRIT. J. SOC. (forthcoming 2010); Shim & Han, *supra* note 7. This rapid industrialization was followed by a rapid urbanization as well. Urban population which amounted to only 18.3% of the total population in 1950 increased to 80% in 1990. Also severe uneven development between the urban and rural areas resulted.

32) Shim & Han. *supra* note 7.

33) In the rural areas there still exists the old patriarchal tradition of preferring sons to daughters, and it is still strong. In the patri-lineal system only sons can succeed the family, not the daughter. (The head of the family system, which stipulated that only sons could be the head of the family, was abolished only in 2005.) Once a daughter gets married, she is considered not as a member of the family any more, but as a member of her husband’s family. If a family has no son, they try to adopt a son, because they think that the family line has been “cut off.” Also, in the situation where no welfare state system is established, the only thing to rely on when you

The rural family had not only difficulty in providing material necessities, but the most basic function of reproduction of the family itself became more difficult with the increase of “unmarriageable rural bachelors.” Thus many single men who live in rural areas have difficulty in getting married with Korean women. These people who could not find their spouses in the domestic marriage market have no choice but to turn to international marriage.

## *2. Globalization, Individualization, and the Risks of the Second Modernity*

The second kinds of risks are risks resulting from the globalization and individualization. In Korea in the 1990s serious pathological consequences of the rush-to-development began to appear. They emerged as large-scale accidents on the sea and land, and in the sky.<sup>34)</sup> The economic crisis of 1997 was the first time that Korean people began to realize the world outside Korea. Almost all the existing institutions seemed to fail. On the verge of state bankruptcy, most of the corporations had to go through structural adjustment, many people were laid out, and irregular job were prevalent with labor flexibilization, etc.

The family which was the backbone of the rush-to industrialization was not an exception. With many laid-out fathers the families were materially, culturally, emotionally less capable of providing resources. Many wives went out to make money for the family. However, this resulted in the increase of double burden. With sexual division of labor and patriarchy still firm in the family, the domestic work for wives increased. Furthermore, this brought about the disintegration of the family, since there was no one in the family to

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get old is the son. Thus the preference to son has been strong particularly in the rural area.

34) For example, a ferry boat in the Yellow Sea sank, leaving several hundreds of people dead (1993); another ferry boat caught fire (1994); a train was derailed and overturned near Pusan, leaving many dead (1993); an urban gas pipe exploded in the middle of Seoul (1994) and again in Taegu (1995); a bridge across the Han'gang river collapsed (1992, 1994); a luxurious department store in a middle-class neighborhood in southern Seoul collapsed (1995); airplanes crashed in Southern Korea (1993) and in Guam (1997), leaving most of the passengers dead; and finally in November 1997, the ever-expanding Korean economy suddenly collapsed under the foreign exchange crisis, requiring a bail-out request to the IMF. See Young-Hee Shim, *Sexual Violence and Sexual Harassment in a Risk Society*, 38(2) KOREA. J. (1998).

take care of the husband, children and the elderly during the daytime. The unchanged gender inequality made women with high education and gender equality in mind<sup>35)</sup> fall in conflict.<sup>36)</sup>

This in turn resulted in the individualization of women, represented in decrease on marriage, increase of divorce rate, decrease in birth rate, and change of attitude toward marriage. While crude marriage rate decreased from 10.6 in 1980, to 9.3 in 1990, 7.0 in 2000 and 6.5 in 2005, crude divorce rate increased rapidly from 0.6 in 1980 to 1.1 in 1990, 2.5 in 2000, and 2.6 in 2005. With this ratio of divorce to marriage also decreased from 5.9 in 1980, to 11.4 in 1990, 35.9 in 2000, and 40.6 in 2005.<sup>37)</sup>

Birth rate also dropped, total fertility rate dropping from 4.53 in 1970 to 2.83 in 1980, 1.59 in 1990, 1.30 in 2000, and 1.08 in 2005. The proportion of Korean women who think that they have to get married decreased significantly from 30.5% in 1998 to 21.9% in 2002, and 21.6% in 2006.<sup>38)</sup> Together with a drastically fast ageing trend in Korea this certainly was a crisis for the government to solve.

All these problems are risks which emerged as side-effects of “the first modernity”, or government-initiated rush-to industrialization and rapid urbanization, on the one hand, and globalization, failure of the family, and individualization of women in the second modernity,<sup>39)</sup> on the other. In this situation, promoting the international marriage was an alternative which the government could not but take to solve not only the problem of “unmarriageable rural bachelors” but also the problem of low fertility crisis.

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35) Women’s education level has been heightened. Also women’s socio-economic participation rate improved. Women’s economic activity participation rate was 26.8% in 1960, 36.5% in 1970, 42.8% in 1980, 47.0% in 1990, 49.5% in 1997, 47.0% in 1998 (economic crisis period), 48.5% in 2000, 48.9% in 2005 (Korean Women Development Institute, *Yearbook of Women Statistics* (2007)). Further women’s consciousness was also raised and many women-related laws were legislated to improve gender equality in Korea.

36) Shim, *supra* note 34.

37) Korean Women Development Institute, *supra* note 35.

38) *Id.*, Shim & Han, *supra* note 7.

39) *Id.*

## VI. Summary and Conclusion

In this paper I tried to review the change of marriage migration-related laws and find out the characteristics and meanings of the changes. I also tried to analyze the social context of these changes and suggest the relationship between the law and society. As objects of analysis I chose Nationality Act, Act on the Regulation of Marriage Brokerage Agencies, Multicultural Family Support Act, and Government Instructions on Social Integration Program.

The changes were characterized as 1) changes from *laissez faire* to more regulations, 2) changes from denationalization of reproduction to re-nationalization of reproduction, and 3) changes from pure blood ideology to multiculturalism and social integration,.

When seen from a macroscopic perspective, most of these changes turned out to be the government's response to risks of the first modernity, that is, side-effects of rapid industrialization and urbanization, on the one hand, and risks of the second modernity, that is, globalization and individualization, on the other. However, when seen from a more microscopic perspective, there were government's role and initiative in making these multicultural policies.

In this sense it can be concluded that the relationship between the law and society, as far as the marriage migration-related laws are concerned, seems to be one of interrelationship between law and society, showing "society first, and law follows" relationship on the one hand, and the government taking an initiative relationship on the other.

KEY WORDS: marriage migration, migration-related laws, Nationality Act, Act on the Regulation of Marriage Brokerage Agencies, Multicultural Family Support Act, Government Instructions on Social Integration Program

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