

Poverty, Debt and Legal Aid in Japan

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Preface

As an introduction to the issues of “Poverty, Debt, and Legal Aid in Japan”, I would first like to show you some snapshots from everyday life in Japan. This photo was taken from a train station I use for shopping. I am living in a city called “Nagoya” which is located in mid-Japan and has a population of about 2 million. When we use public transportation, like subways and non-subway trains, we find a wide variety of colorful advertisements, ranging from those for new magazines, holiday plans, English conversation schools, and so on. Glance over these ads, and you can tell what business is popular, becoming big, or making profits on the market. Recently, I often find this kind of advertisements. What do you think this advertisement is for? Would you guess what this is for? The answer is that this is an advertisement of lawyers seeking debt-ridden clients. I can read here “SAIMUSEIRI = Debt Work-Out” and “Please contact us if you are in trouble with debts”. Here is another one. This is the similar advertisement by not a law firm but a legal scrivener, and this again targets debtors.

The most appealing medium for ads in my country is the ground-based television. This is an informational TV program for housewives broadcasted in daytime on weekdays. And this is one of the inserted commercial messages. This young female TV idle says, “What’s wrong? You look a little down. Troubled with debts? Why not consult with a lawyer”. Sponsors of this kind of advertisements are major law firms with large numbers of legal specialists and clerical workers. Each of such a law firm could be spending tens of millions of yen or several hundreds of thousands US dollars per month for public relations, which is on par with big companies. These advertisements tell us the fact that debt work-out is now a profitable business for lawyers and legal scriveners in Japan.

The Japan Legal Support Center, or JLSC established in 2006 with 100% funding by Japanese government now has approximately 100 in-house lawyers working full time, and also has contracts with about 50% of all the lawyers and 25% of all the legal scriveners in Japan. In 2008, JLSC commenced 85,000 cases of civil legal aid. Among them, 3 out of every 4 cases were reported to be cases of over-indebtedness involving need for personal bankruptcy. However, this figure represents only a fraction of the number of over-indebtedness cases out there in the society of Japan. According to the government’s estimation, there are approximately two million domestic debtors, and only about 20% of them reach for help by these experts including JLSC.

In Taiwan, I understand with great respect that the Consumer Debt Clearance Regulation was enacted in 2007, which gave debtors in Taiwan legal ways out of despair. Consequently, however, I have heard that 90% of applicants for this legal relief rushes to the Legal Aid Foundation. That must be a great burden on Esq. Liu, and members and staff of the Foundation. As I understand, this is because very few lawyers except those who are with the Foundation, and very few other experts, are involved in the issues of debtors.

What makes such a difference between Taiwan and Japan, between the two countries located within East Asia?

I am a sociologist. Sociology focuses on the substance and mechanism of communication amongst people who build up each institution and/or organization. Now, let’s figure out a puzzle behind the everyday scene surrounding debtors in Japan, with some hints taken from the sociological perspective.

1. Behind the scene

The rush of advertisement by legal professionals for debt-ridden citizens began in 2006. Let me now look at what happened in that year. There are two events to be noted, which forced Japanese consumer finance market to veer widely.

One of the two events was that, in 2006, Japanese Supreme Court ruled that money-lenders had been charging excessive interest rates in the past and that they are liable to repay the over-charged interests. This Supreme Court ruling opened the door for borrowers to file complaints against money-lenders and claim the overpaid interest. The number of people who had dealt with money-lenders is 20 million, which means 1 out of every 6 people living in Japan has dealt with a money-lender in some way. The Supreme Court ruling made money-lenders potentially liable for returning a large portion of their enormous profit they had gained in the past to their over 8 million customers, i.e. borrowers or ex-borrowers.

Another event in 2006 was the amendment of the Money Lenders' Law which set a ceiling of 20 percent per annum on the interest rates charged by money-lenders, and required lenders to ensure that the borrower's outstanding debt remains below one-third of his or her annual income. In other words, a lender cannot lend money to the borrower if the new loan will make the borrower's total outstanding loan exceed one third of his/her annual income. The amendment was a bold change in the regulation of both the price and sales volume of consumer loans as financial commodities. Accordingly, money-lenders are forced to rebuild their business by tightening lending conditions. The rate of successfully-entered loan contracts out of all loan applications have dropped from 42% to 26%, in the past two years.

Now I would like to briefly add two facts that would contribute to your understanding of Japanese local context.

Firstly, loan business is, in principle, restricted to banks here in Taiwan. But in Japan, non-bank money-lenders whose main business are unsecured, non-guaranteed loans, have been leading the domestic consumer finance market. Over 2 million out of fourteen million borrowers from these money-lenders were in bad or difficult situation. This means over-indebtedness could not be resolved without regulating money-lenders.

Secondly, prior to 2006, the official limit on interest rates had already been 20 percent, but there existed a so-called "grey zone" interest of up to 29.2 percent, which was the de-facto interest rate limit. On condition of voluntary informed consent by borrowers, the lenders used to be allowed to charge interest up to 29.2%. The court's ruling I've mentioned earlier acknowledged that the gray zone interest beyond 20% per annum was not optional but something borrowers had to live with.

Before 2006, the main players of the advertisement rush for debtors were money-lenders earning enormous profit. Then, eventually, the two events changed the whole scene. Many money-lenders were forced to give their seats of advertisements to lawyers who file complaints claiming repayment of overpaid interest of over 10 trillion yen in total.

2. History

Some people, some of you may feel doubtful about the possible outcome of these changes. Some people may say, "Let the free market work, then both lenders and borrowers will be happy with the price of loan. How could the Supreme Court and the

National Diet make their decisions that would cause shrinkage of the consumer financing market? ” “Doesn’t shrinkage of the market result in barring out some consumers? Do the decisions result in depriving borrowing opportunities from the poor, i.e. those people we are focusing on in this discussion?” “Don’t you think that they could end up with borrowing money from illegal loan sharks and being victimized?”

To remove such doubts, two factors are required: sympathy and conviction. To be more concrete, one factor is sympathy of the society to the despair of those average citizens who used to lead happy lives, but have lost all their hopes and self-esteem because they’ve lost prospective for repayment. Another factor is the conviction that “over-indebtedness is not attributable to individual persons, but it can be avoided and prevented through the efforts by society.”

I am a sociologist, and sociologists sometimes use the term “moral entrepreneurs”. Moral entrepreneurs are people who define problems in society, propose their solutions, and persuade policy makers and the general public. Then, when and where do those entrepreneurs appear? The answer depends on where in the society those people with enthusiasm and know-how are residing. For example, for problems concerning over-indebtedness, in the Republic of Korea, judges of the Supreme Court are the moral entrepreneurs; and here in Taiwan, members of the Legal Aid Foundation are the moral entrepreneurs. So, how about in Japan? The moral entrepreneurs emerged from the close-knit nation-wide coalition of private expert groups of lawyers and legal scriveners as well as citizens’ groups of debtors themselves in the late 1970’s.

Back in those days, over-indebtedness used to be considered as attributable only to individual persons. Around that point in time, a young lawyer in his thirties practicing law in the western part of Japan had an opportunity to interview many debtors with his colleagues and to listen to their stories in detail. Through the interviews, the lawyers realized the gravity of the problems caused by over-indebtedness; and the loss of all hopes for the future was what they observed. Then, they reached a conviction that this issue must not be left unsolved. Debtors were gathered, and news reporters were invited. The lawyers persuaded the debtors to speak out before the reporters. At this first meeting, major players were the debtors. They shared their own stories relating to their debts with the audience. They were surprised not only by finding out that they were not alone, but also by the fact that their stories inspired the audience and promoted the enthusiasm among them. This marked the very first step in the history of debtors’ self-help organizations in Japan.

On the other hand, while promoting establishment of self-help organizations of debtors, the lawyers began to form a national organization of experts together with their colleagues, legal scriveners and academics.

To date, this organization of experts has grown to have 700 members and 16 affiliated organizations specialized in different fields ranging from international exchange to suicide prevention. Debtors’ self-help organizations have also grown nationally; there are about 80 self-help organizations and groups including sub-organizations across the country.

Let me now look at what this moral entrepreneur has done before 2006. They brought a great many debtors’ cases to courts around the country one after another to make judges change their perception about debtors and lenders. The moral entrepreneur took a role-sharing strategy where people under the entrepreneur divided themselves into two. Debtors, on one team stood at the forefront of the movement and spoke about themselves in public at meetings and to the media. Legal professionals on the other hand, explained to the public and to authorities that over-indebtedness was attributable to the inadequacy of the Money Lenders’ Law and that the law had to be

amended. The 2006 court ruling I mentioned earlier was a fruit of such tightly coordinated efforts by all the players.

The 2006 court ruling imposed a major challenge to the national government and Diet, because the ruling was an explicit message that problems concerning consumer indebtedness could not be left unsolved and, for that reason, the law had to be amended. The moral entrepreneur then took the next step; appealing to local assemblies and the public. In 2005, the Japanese Trade Union Confederation (Rengo), with roughly six million members, decided to join the team. With the strong support by Rengo, 3.6 million people signed the petition calling for ban on the grey zone interest. They also led more than 90 percent of prefectural assemblies and more than 60 percent of municipal assemblies to pass motions favouring reductions in the maximum interest rate.

And please look at this picture. One hundred and twenty-five years ago, poor peasants suffering over-indebtedness assembled at the Muku Shrine and paraded 150km to the central government complex in their attempt to bring their petition for relief to the government. Unfortunately, they were cracked down by the government, and their attempt failed. Seven people were sentenced to death as a result. Professionals and debtors overlapped their movement with the attempt by the peasants in old days, and decided to relay the petition from the Muku Shrine to the National Diet Building. Some dressed in costumes of 125 years ago, and others in matching yellow T-shirts. Their sincere yet somehow humorous attempt inspired people's enthusiasm to amend the law. Under the growing pressure from the public opinion, in December, 2006, the Diet decided to amend the law.

3. Challenges we're faced with

I think we have figured out the puzzle behind the everyday scene surrounding debtors in Japan, so, in conclusion, I would like to present three remaining challenges we're faced with.

Firstly, the advertisement rush by lawyers is only a temporary phenomenon. Under the amended law to ban gray zone interest, sooner or later, all of the overcharged interest from the past will be disgorged to the bottom from the lenders. Most lawyers who are deeply soaked in the advertisement rush competition are newcomers to the field. This means that the majority of them do not know anything about people's 40-year grass-root efforts through rough passages. They don't know all the tears of fear, tears of anger, and tears of joy. Sooner or later, the market of the overpaid interest will be used up, and we never know how many of them will remain with the debtors. With this perception in our minds, we need to develop and improve infrastructure for debtors so that debtors can clear their debts without too much difficulty and without intervention by legal professionals.

The second point is the responsibility of the banks. Debtors' self-help groups insist that banks share responsibility in solving problems concerning over-indebtedness, because major money-lenders are affiliated with banks. These money-lenders do not refund the overcharged interest voluntarily, unless borrowers claim for refund through lawyers. Money-lenders are spending only one quarter of their allowance reserve for refunding consumers. In addition, as banks find consumer finance profitable, they began to lend money directly to consumers. We need to keep our eyes open to prevent banks from lending money to their customers irresponsibly.

Thirdly, the population of so-called "working poor" is growing. These are the people who find their lives difficult even after their debts have been cleared. We have found one challenge after another, i.e. issues of poverty behind over-indebtedness. The

moral entrepreneur expands the scope of their work to tackle poverty, by working together with single-parent families, handicapped people, temporally workers and so on. Their projects cover from improvement of accessibility to welfare benefits, to reform of labor and social security systems.

The Japan Legal Support Center does not commit itself to these social movements officially as an institution. However, as far as I know, some of their full-time staff lawyers are personally engaged in these social movements with much enthusiasm.

The keys to the successful resolution of poverty as well as over-indebtedness, are sympathy and conviction. It is very essential in fighting poverty to communicate the hardship suffered by people in trouble to the public. For this, it is very important to have actual people with faces and names share their experiences with the public. It is a mission of the moral entrepreneurs to support and foster those courageous people who can speak out their experiences.