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Disabled People’s Fight for Rights in South Korea and Japan

CELESTE L. ARRINGTON

The rights of people with disabilities are increasingly recognized in Japan and South Korea, East Asia’s main industrialized democracies. In 2008, South Korea enacted unprecedented legislation to prohibit disability-based discrimination and ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD). Japan passed similar anti-discrimination legislation in 2013, revised its Basic Law for Disabled People in 2011, and ratified the CRPD in 2014. These developments fit a global trend: the number of countries with prohibitions on disability-based discrimination grew from 40 in 2002 to more than 125 today. South Korea and Japan also recently bolstered regulations requiring accessible public transportation, barrier-free buildings, information accessibility, and employment quotas for disabled persons. These reforms indicate three interrelated changes in both polities: shifting understandings of disability, growing self-advocacy by disabled persons, and a more legalistic approach to governance.

South Korea and Japan have notable similarities. They were historically quite homogeneous societies, unwelcoming of difference. Longtime conservative rule—under authoritarianism in Korea and one-party dominant democracy in Japan—excluded certain groups from policy processes before the 1990s. Both governments also preferred flexible, cooperative regulatory approaches rather than legalistic ones until recently. And both societies are rapidly aging. Japan has the highest

proportion of people over 65 (28 percent) in the world, straining caregiving resources.

Until recently, Japan and South Korea were among the few countries that used centralized systems of grading disability based on medical criteria to determine eligibility for state assistance and benefits. These systems help explain the relatively lower numbers of officially recognized disabled people in both countries, which at 6 to 7 percent of each population is far below other OECD countries. It took a 1,842-day sit-in in a Seoul subway station for Korean disability rights advocates to persuade their government to replace this system in 2019 with one that assesses individual needs and situations, such as rural versus urban. Japan still uses the grading system.

Comparing rights-based activism in Korea and Japan highlights three shared trends and distinctive nuances. First, multifaceted reforms in both countries signal a paradigm shift away from the medical or welfare model of disability, toward the social and human rights models. Previously, disabled people were treated as objects of charity, medical care, rehabilitation, or welfare programs. The social model, however, focuses on how disabled people face discrimination and exclusion due to society’s attitudes toward their conditions and as a result of the built environment. The human rights model goes further, emphasizing the inherent dignity and rights of disabled individuals, including the right to assistance for daily life. Japanese and Korean laws increasingly protect disabled people’s rights, such as by banning discrimination and requiring reasonable accommodations to enable active participation in politics and society. Yet these reforms have helped people with certain physical and cognitive impairments more than others, and the COVID-19 pandemic has exposed inequities and remaining challenges.

Disability and Equality

First in a series

CELESTE L. ARRINGTON is an associate professor of political science and international affairs at George Washington University.

Second, disability-related policy reforms in Japan and Korea are a testament to effective advocacy by—rather than just for—people with disabilities. Some disability subgroups, such as the blind in Japan, have been involved in policymaking for a century. In recent decades, more subgroups mobilized and cooperated across disability types to assert their equal rights and seek to access public transit, education, and care services. Some also pursued cultural, educational, or mutual help activities unrelated to policy. Japanese activists recall discovering “the importance of disabled individuals’ own advocacy for achieving systemic change” while taking turns living in Berkeley, California, on three-month visas in the 1990s to learn about the independent living movement begun there in the 1960s. Self-advocacy also had domestic roots. Disabled activists in Korea and Japan have adopted diverse tactics, including direct action such as protests and sit-ins, as well as institutional tactics like policy research, petition campaigns, lobbying, and litigation to push for reforms. A disabled Korean activist explained, “We protest to give rights meaning and obtain the welfare needed to realize our rights.”

Third, compared with the flexible and cooperative style of previous disability policies, which involved ongoing negotiations among stakeholders and agencies, recent reforms have a more formal, legalistic flavor. South Korea took legalism further, as seen in its anti-discrimination law. The term “legalism” refers to policies and implementation methods characterized by formal rules, enforcement mechanisms like fines, and dispute resolution processes—including via the courts. As a Japanese activist argued, “vague social norms” are insufficient: “We need clear legal rules that will make it easier for everyone to understand what constitutes discrimination.”

Japanese and especially Koreans with disabilities have gained rights, and legal tools for defending and developing their rights, as a result of rising activism by disabled people advocating the social and human rights models of disability. Disability rights activism and policy changes in both countries are also transforming social perceptions of disabilities.

GAINING A VOICE

Most Koreans and Japanese with disabilities were stigmatized and marginalized historically.

Confined to their homes, disabled people received care from relatives, usually women. Public assistance after World War II and the Korean War prioritized rehabilitating wounded veterans to integrate them into the formal economy, as in Europe and the United States. Select categories of disabled nonveterans also obtained support in Japan.

Activists used the international limelight of the 1964 Tokyo Paralympics and comparisons with athletes from the West to seek expanded welfare benefits and services. Policymakers embraced residential institutions as a cost-effective option. Institutionalizing disabled people also solved still-developing South Korea’s goals of promoting social order and lessening families’ burdens so nondisabled relatives could join the workforce. Human rights abuses abounded in Japanese and Korean institutions and are still being revealed: forced sterilizations, sexual abuse, beatings, and deaths due to such mistreatment.

Early activism focused on welfare benefits, maltreatment in institutions, and access to education and public transit, not on “rights” per se. Disabled people in Japan petitioned local governments for better care and services; parents sought access to regular schools for their disabled children. Residents at institutions staged sit-ins and hunger strikes. One oft-cited early activist group in Japan was Aoi Shiba no Kai (Green Grass Association), for people with cerebral palsy. It gained national attention in the 1970s by adopting confrontational tactics, such as protesting abortions or sterilization of the disabled under the Eugenics Protection Law and occupying city buses after disabled persons were denied rides. In the 1980s, an emerging “independent living” movement sought to address barriers in the built environment and gaps in services outside institutions.

In South Korea, meanwhile, a succession of authoritarian regimes hampered mobilization. Nonetheless, families and special education teachers collected signatures on a petition that resulted in exemptions from the physical fitness test for disabled secondary school applicants in 1972. A student and four bar exam passers with disabilities successfully sued for university admission and jobs as judges, respectively, in the early 1980s. Then, mirroring the broader pro-democracy movement’s oppositional tactics, students with disabilities mobilized to an

Disabled people gained prominence in activism.

unprecedented degree to boycott the 1988 Seoul Olympics and Paralympics and to demand legislation providing welfare and employment benefits for disabled people. They also established night schools (*yahak*) to supply high school equivalency education and foster solidarity among disabled people. Advocacy for specialized services and care accelerated with the emerging independent living movement in the 1990s, after mass protests led to democratic elections in 1987 and a new constitution with civil rights protections.

Through such activism, disabled people gained visibility. Fueling this trend was the philosophy that “affected parties”—*tōjisha* in Japanese, *dang-saja* in Korean—should be foregrounded more than professionals or nondisabled allies. One Japanese man with intellectual disabilities described an empowering transition from “not wanting to talk and not being heard,” when in a residential facility, to “coming to believe that we can reform society by telling our stories and discussing our needs.” As more Japanese and Koreans with disabilities engaged in self-advocacy, their activism increasingly advanced the social model, which transfers from individuals to society the onus for dismantling hurdles to disabled persons’ full participation.

GLOBAL LINKAGES

International developments bolstered Japan and South Korea’s blossoming disability rights movements, and Japanese and Koreans contributed to international trends. The first major catalysts were the UN’s Year of Disabled Persons in 1981 and Decade of Disabled Persons (1983–92) and the accompanying global activism. Japanese and some Korean disability advocates had previously hosted foreign activists (Helen Keller visited Japan and its Korean colony in 1937), taken study tours abroad, and joined international conferences. Yet initiatives in the 1980s facilitated domestic organizing and more sustained transnational engagement.

Aoi Shiba had established the progressive National Federation of Movements for the Liberation of Disabled Persons (*Zenshōren*) in 1976, and multi-disability organizations proliferated in Japan thereafter, with international linkages. The Japanese branch of Disabled Persons International (DPI-Japan) was founded in 1986 and grew to include nearly 100 allied groups. Independent living centers, many of which were founded in the 1980s and adapted US ideas to the Japanese context, coalesced into the Japan Council for Independent Living Centers in 1991.

In South Korea, multi-disability organizing began with the Federation of Disabled Youth and DPI-Korea in the late 1980s and accelerated with democratization. These youth favored direct action and *dangsaja* leadership. In subsequent decades they spearheaded the mobility rights movement, contributed radical tactics to the anti-discrimination law movement, and founded the group Solidarity Against Disability Discrimination, which organized the five-year sit-in to abolish the disability grading system. A pair of more moderate groups, the Korea Federation of Organizations of the Disabled and the Korea Differently Aabled Federation, were formed in the 1990s. Such groups campaigned increasingly for the rights of all disabled persons (though certain subcategories of impairments were overrepresented) and engaged with foreign advocates.

The Japanese and Korean governments also responded to UN initiatives in the 1980s and early 1990s, but rights were not yet prioritized. More *tōjisha* were invited to become members of Japanese policy deliberation councils, which emphasized “normalization” and reducing barriers in daily life. Although revisions to the Basic Law for Disabled People in 1993 legally acknowledged disabled persons’ rights for the first time, they provided no enforcement mechanisms. Policy still relied on “welfare and good intentions (*zen’i*),” as one activist noted.

For South Korean dictator Chun Doo-hwan, who held power from 1981 to 1987, improving state support for disabled people fit his aim of turning Korea into an advanced country with a modern welfare system. The 1988 Seoul Olympics showcased Korean development and democratization globally, but activist groups criticized disability-related reforms as superficial. As in Japan, public assistance, special education, and employment opportunities gradually improved.

The 1990 Americans with Disability Act (ADA) provided a second accelerant for Japanese and Korean disability rights movements, serving as a model civil rights–style anti-discrimination law. In 1993, DPI-Korea translated the influential book *The Impact of the ADA* from Japanese. An online network of disabled and nondisabled Koreans started studying foreign anti-discrimination laws.

The ADA raised awareness about how law and lawyers could promote equality. After studying disability rights advocacy in Berkeley, Japanese disabled activists and lawyers founded Legal Advocacy for the Rights of Disabled Persons

(LADD) in 1996. The Japanese and Korean national bar associations created disability rights subcommittees at the turn of the millennium, and each added a chapter on disabilities to its annual human rights report. Activists and lawyers then published two drafts of anti-discrimination laws in each country, using the ADA and similar British and Australian laws as benchmarks.

The third, contemporaneous international catalyst was the CRPD, which Mexico jump-started in 2001, supplying the first draft for UN negotiations. The convention (which the United States has yet to ratify) declared that all international human rights also apply to people with disabilities, and specified adaptations needed for them to effectively exercise those rights. Japanese and Korean officials and disability organizations participated actively in the negotiations. The Japanese delegation contributed language to Article 13 about eliminating physical and communication barriers in courtrooms. The Koreans were crucial in drafting Article 6 (on women with disabilities) and Article 19 (on independent living). As with Japanese and Korean foregrounding of affected parties, CRPD negotiations emphasized the now-global phrase “nothing about us without us.” Japan and South Korea both signed the CRPD in 2007.

Involvement in the CRPD negotiations deepened Japanese and Korean activists’ international networks, as well as their ties to officials from their own countries. As an adviser to the Japanese delegation, Japanese lawyer and wheelchair-user Higashi Toshihiro helped write Article 13 of the CRPD, reportedly informed by the hardships that a client of his with intellectual disabilities had experienced in Japanese courts. The Democratic Party of Japan (DPJ) later chose Higashi, instead of a career bureaucrat, to lead its new Cabinet Secretariat for disability policy reforms.

Korean women with disabilities, who had transnational advocacy experience from participating in the 1995 Beijing World Conference for Women, were prominent in South Korea’s delegation to the CRPD negotiations and championed Article 6. They were also invited onto the committee for drafting domestic anti-discrimination legislation and ensured that clauses about women were in the law. In such ways, CRPD-related connections, rhetoric, and experience often facilitated domestic policymaking to implement the CRPD.

ACCESS ACTIVISM

Access-related activism and reforms in Japan and South Korea began before the CRPD, but international developments added impetus for legislation with teeth. As a result of domestic activism, more elevators have been installed in both countries, raised strips and audio cues guide visually impaired riders, buses have lower floors, and buildings and information technology have become more accessible, though gaps persist.

Japanese access protests began in the 1970s and accelerated in the 1980s, when the independent living movement capitalized on concerns about the aging population to advocate universal design. As in the United States, protesters’ demands first drew a response from local governments. Then, the Diet passed the so-called Heart Building Law in 1994, with subsidies for accessible design modifications but voluntary architectural standards. The first legal requirement for accessibility was the 2000 Barrier-Free Public Transportation Law. Activism for stronger regulations contributed to the 2006 New Barrier-Free Law, which expanded

the scope of people and facilities covered by the mandate for universal design and made policy processes more inclusive. In the late 1990s, another movement fought to eliminate the dozens of legal clauses that disqualified dis-

abled people from certain professional licenses.

In South Korea, fatal accidents, such as the 2001 death of a woman using a wheelchair lift in the Seoul metro, prompted disability groups to organize for the right to mobility (*idong gwon*). Activists with roots in the 1980s student protests occupied buses and chained themselves to train tracks. These demonstrations prompted the 2005 Act on Promoting Transportation Convenience for Mobility Disadvantaged Persons. It set mandatory standards, subsidized low-floor buses, loosened regulations on drivers’ licenses for disabled people, and established special transport services. The 1997 Law to Promote Convenience for Disabled People, Senior Citizens, Pregnant Women, and Nursing Mothers covered facilities and equipment and has been repeatedly revised.

The benefits that strengthening accessibility regulations would provide for ballooning elderly populations and the parents of young children bolstered support for such measures. Japan’s March 2011 triple disaster (earthquake, tsunami, and

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nuclear plant meltdown) spurred reforms by exposing the sometimes-fatal consequences of inaccessibility, not just for disabled people fleeing the tsunami but also for the elderly. Similarly, after a lawsuit by disabled persons over inaccessible intercity buses in South Korea failed, the lawyers added older adults and parents with strollers as plaintiffs—and won.

Some policies intended to benefit both older and disabled groups have been detrimental to disabled people with different needs. When Japan merged the welfare systems for older and disabled people via the 2005 Independence Support Law (ISL), disability communities were angered because the legislation canceled popular new benefits and imposed a 10 percent co-payment for care, which can be costly in cases of severe disabilities. Arguing that the co-payment burden violated their right to life, tens of thousands protested. After the protests failed to prevent the ISL's passage, 71 disabled people filed 14 collective lawsuits. The plaintiffs were represented by 173 lawyers, and the cases raised awareness of disability rights among legal professionals. Replacing the ISL joined anti-discrimination legislation and CRPD ratification as the main objectives for disability rights advocates in Japan.

ENSURING RIGHTS

Disability discrimination legislation that was passed in 2007 in South Korea and in 2013 in Japan constituted milestones for disability rights and the activists who had sought such laws for a decade. The Korean law explicitly “prohibited” (*geumji*) disability-based discrimination, defined specific forms of discrimination, assigned the National Human Rights Commission of Korea (NHRCK) to hear complaints (including from NGOs, not just individuals), and stipulated judicial recourse and fines. The NHRCK can investigate cases and issue nonbinding recommendations, even if the cases are also being litigated in court. The proportion of disability-related discrimination complaints submitted to the NHRCK leaped from 14 percent to 61 percent in the first eight months after the law's enactment.

Although Japanese activists sought similarly detailed definitions of discrimination and justiciable rights, the Japanese law, which took effect in 2016, aimed instead to “eliminate” (*kaishō*) discrimination. Its definition of discrimination was vaguer, and it offered no explicit judicial recourse. Although it obliged public entities to provide

reasonable accommodations, it relied on voluntary compliance from private entities—until 2021 revisions, which will go into effect within three years, made it mandatory for businesses to offer reasonable accommodations. The 2013 law also created regional disability elimination councils to facilitate communication among stakeholders and mandated consultation offices for dispute resolution. Consultation (*sōdan*) is often faster than court-based remedies, but cannot force compliance. The Cabinet Office reports that all councils include *tōjisha*, but three-quarters have no women *tōjisha*.

In sum, both laws improved disability rights, but Korea's more legalistic reforms offer more robust rights-claiming options for disabled people. Several factors explain why the Korean reforms were earlier and more legalistic than Japan's.

First, about 60 Korean disability groups united as the Disability Discrimination Act Solidarity of Korea (DDASK), while Japanese disability groups were less unified and pursued anti-discrimination legislation among other core policy objectives. DDASK decision-making was designed to secure buy-in from Korea's largest disability groups, which sometimes disagree. It also incorporated the mobility rights movement's leaders as a radical flank—they organized disruptive tactics alongside tamer negotiations over the law's content. With concerted pressure and support from the government, the DDASK persuaded liberals in the National Assembly to pass anti-discrimination legislation before the widely anticipated conservative victory in the 2007 presidential election. Japanese disability groups took a less centralized approach, with different organizations pushing to abolish the ISL, increase employment quotas for disabled people, curb abuse in institutions, and revise the election law to enfranchise people with intellectual disabilities. They achieved most of these reforms but ended up with an anti-discrimination law that was weaker than Korea's.

Second, a left-leaning government ascended to power earlier in South Korea than in Japan during this phase of disability rights activism. In both countries, left-of-center governments included disabled persons in policymaking to an unprecedented degree and prioritized reforming disability policies. In South Korea, President Roh Moo-hyun (in office from 2003 to 2008) had pledged anti-discrimination legislation on the campaign trail. His administration established a government–civil society task force to draft a bill. The DDASK selected representatives for the task force, which used the

DDASK's draft as a starting point. Such institutional tactics were coupled with weeks-long sit-ins and demonstrations. Although the final bill excluded some activists' demands, it detailed types and situations of discrimination and formal remedy procedures.

In Japan, disability activists received support from the center-left DPJ, but the party did not rule until 2009–12. This was only the second hiatus in conservative rule by the Liberal Democratic Party (LDP) since 1955. (The first was in 1993–94.) The DPJ's campaign manifesto pledged anti-discrimination legislation and additional disability policy reforms. The LDP-led government had proposed reforms in early 2009 to harmonize domestic laws with the CRPD, but the proposals were rejected as "cosmetic" by the Japan Disability Forum, the coalition of Japanese NGOs that had participated in the CRPD negotiations.

After its 2009 election victory, the DPJ created a cabinet headquarters for reforming disability policies. Committees set up by the headquarters to debate reforms included outside experts and activists, with unprecedented numbers of disabled persons; the lawyer Higashi and four other activists were appointed to the headquarters' secretariat. They shaped the content of 2011 revisions to the Basic Law for Disabled People and the ISL's replacement in 2012. But the anti-discrimination law was finalized, and the CRPD ratified, with less inclusivity under the LDP, which regained power in late 2012.

It should be noted that Japan often revises domestic legislation to harmonize it with international treaties *before* ratifying the treaties, whereas South Korea ratifies first and then harmonizes domestic legislation. These distinctive paths to international norm adoption also help explain why non-discrimination protections came later and were weaker in Japan than in South Korea.

GIVING RIGHTS MEANING

Comparing Korean and Japanese anti-discrimination laws indicates the emergence of a more legalistic regulatory style in both countries, but more so in South Korea. Consequently, while litigation is a last resort everywhere, Koreans with disabilities are better positioned to mobilize the law to give judges opportunities to clarify and delimit the scope and application of new rights

and raise public awareness. Since 2008, for example, the NHRCK and courts have expanded the definition of disabilities to include HIV/AIDS, in response to NGOs' lawsuits, and have clarified the definitions of discrimination and reasonable accommodations.

In Japan, the anti-discrimination law's impact has been more indirect. According to DPI-Japan, the fact that disability discrimination complaints to consultation bodies now occur "in the shadow of the law" may improve outcomes. The law apparently emboldened plaintiffs to overcome fears of stigma and file eight lawsuits regarding forced sterilizations of persons with intellectual or mental disabilities that were carried out under the Eugenic Protection Law, which was abolished in 1996. One of the plaintiffs' lawyers, the blind attorney Oogoda Maokoto, also attributed the courts' unprecedented accommodation of disabled observers in the galleries to the anti-discrimination law. Several (but not all) courts ruled the sterilizations unconstitutional, and a 2019 law provided monetary support to the thousands who were forcibly sterilized. Yet Japanese lawyers remain skeptical about the justiciability of the anti-discrimination law.

One advantage that Koreans with disabilities have for realizing their rights is the greater institutionalization of public interest lawyering

compared with Japan. Korean public interest law firms and foundations usually list disability law as a practice area. These new entities, an organizational form pioneered by the public interest law firm Gonggam in 2004, institutionalized an infrastructure that supplies salaried public interest lawyers, funds legal research and test cases, and mobilizes like-minded lawyers for cases. Since 2009, two of the largest Korean law firms have established public interest law foundations; both conduct and fund disability rights advocacy.

In 2011, lawyers, prosecutors, judges, and scholars established the Korea Disability Law Association (KDLA). Besides identifying test cases for litigation, researching foreign jurisprudence, and submitting parallel reports to the UN's CRPD committee, the KDLA published a manual on disability rights for lawyers and judges in 2013. Such institutionalized support for disability rights bolsters policy implementation and the legalistic turn in disability-related governance.

*Korea's more legalistic reforms
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While the KDLA resembles lawyering networks in Japan in its loose structure, it partners with more formalized public interest law firms and foundations, which do not exist in Japan. This is not to say that experienced lawyers have been absent from Japan's disability rights activism. LADD-affiliated lawyers founded the Japan Federation of Bar Associations (JFBA) subcommittee on disability rights and wrote the first drafts of the anti-discrimination law. The Disabilities and Human Rights Lawyers' Network, created in 2002, has included several dozen members who handle individual discrimination cases and share know-how. The lawsuits over the Independent Support Law mobilized nearly 175 lawyers. Individual lawyers report giving more training sessions about disability rights for public employees since the anti-discrimination law was enacted.

But Japanese lawyers with disability law expertise remain loosely connected. They are thus less visible to potential rights-claimants, and they have fewer financial and organizational resources than their Korean counterparts.

PERSISTENT CHALLENGES

Improvements in disability rights in Japan and South Korea notwithstanding, the COVID-19 pandemic exposed the persistent challenges that disabled people face in both societies. The National Human Rights Commission of Korea and the public interest law foundation Duru reported that mandatory self-isolation after exposure to the virus deprived people with severe disabilities of their attendants. Communication difficulties left some disabled persons unable to access masks, testing, or timely information. DPI-Japan and the JFBA publicized similar pandemic-related problems. Closures of special schools and day-care centers placed a greater burden on families with disabled relatives. As in other countries, there were COVID-19 outbreaks in residential care facilities for the disabled, which added urgency to both countries' preexisting deinstitutionalization movements.

The 2016 mass killing of 19 disabled people by a former employee of a care home in the Japanese city of Sagami-hara had previously highlighted patterns of abuse in institutions, as had several Korean court cases and a 2011 Korean film, *Doga-ni*, about sexual assault in a school for the hearing-impaired. The number of psychiatric care beds in Japan remains the highest per capita among OECD countries, and South Korea's number is also above the OECD average. Although Korean and Japanese government policies increasingly facilitate deinstitutionalization via assistance and training programs, COVID-19 disrupted these services. It also exacerbated caregiver shortages, albeit less so in Korea, where relatives of the disabled secured the right to government pay as designated caregivers a decade ago.

On balance, however, disability rights have improved in South Korea and Japan, largely thanks to disabled people's activism. Rather than seeing disabled persons as objects of medical or welfare aid, both societies increasingly see them as rights-bearers. The anti-discrimination legislation enacted in 2007 in Korea and 2013 in Japan manifested this paradigm shift. So have other disability-related reforms in areas such as special education, employment quotas, and personal assistance services, though not all reforms work equally well for people with different disabilities.

Both countries' disability discrimination laws reflect a legalistic turn in governance. But the Korean anti-discrimination law contains more robust definitions, rights, processes, and remedies for claims-making. Without parallels in Japan, the Korean public interest law sector institutionalized support for legal mobilization to develop disability rights. Even more important may be the rise of organized self-advocacy, which continues to press for policy changes in both countries. As disabled Koreans and Japanese leverage these improved legal tools to protect and promote their rights, including full participation in society, they also seek to raise awareness of the rights and dignity of people with disabilities. ■