Constitution of Japan and the Youth: The Human Rights of Minors

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Abstract

In Japan, the human rights of minors gained attention since the 1980s onward, against the backdrop of school-based problems like bullying, corporal punishment, and school refusal, as well as the adoption of the UN Convention on the Rights of the Child. Minors are given special protection and are subject to certain constraints under the law. This article discusses the human rights of minors under the Constitution of Japan from the perspectives of "protection" and "constraint." In line with these perspectives, it also provides an overview of the history and trends in policy issues with respect to minors by looking at legislative examples and judicial precedents.

Introduction

What can be said about issues concerning the youth from the perspective of the Japanese Constitution? In the academic community that addressed Japanese Constitutional Law until the 1970s, "the issue of whether a 'child' or 'minor' is a holder of constitutional rights…was hardly discussed."[1] Japanese Constitutional Law scholars were not conscious of the human rights issues that were inherent in "children" and "minors." It was not until the 1980s and 1990s that this theme was taken up in articles and books on Japanese Constitutional Law, respectively.[2]

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* All information sourced from the Internet in this article was as of 2020.12.7.

[1] 赤坂正浩「子どもの人権」赤坂正浩ほか『ファーストステップ憲法』有斐閣, 2005, p.15 (AKASAKA Masahiro, "Rights of Children," AKASAKA Masahiro et al., *First Steps in the Japanese Constitution*, Yuhikaku Publishing, 2005, p.15).

[2] *ibid.*, pp.15-17. Further, 中村睦男『憲法 30 講　新版』青林書院, 1999, p.36 (NAKAMURA Mutsuo, *Japanese Constitution, 30 Lectures, New Edition*, Seirin-Shoin, 1999, p.36) stated that before the 1990s, each right and freedom (e.g., right to learn) was considered an issue pertaining

In the 1980s, school-based problems like bullying, corporal punishment, and school refusal received significant attention. The Convention on the Rights of the Child was adopted internationally by the United Nations (UN) General Assembly in 1989. It was ratified in Japan in 1994 (1994 Convention Item 2). Prominent constitutional precedents from this time included the Case concerning the violation of the School Ordinance on Buzz Cuts for Male Junior High School Students (Kumamoto District Court judgment, 1985.11.13) and the Case charged for the violation of the Gifu Prefectural Ordinance for the Protection and Development of Youths (Supreme Court of Japan Third Petty Bench judgment, 1989.9.19). The issues concerned school ordinances that mandated buzz cuts as hairstyles and that regulated the sale of harmful books, respectively. Both cases may convey a slightly old-fashioned impression.

However, even after this case on buzz cuts, school ordinances that prohibited permanent wave hairstyles[3] and forced to dye the hair black[4] were disputed before the courts. The proliferation of harmful information on the Internet has been debated in recent times. The essential issues pertaining to the protection and constraint on the freedom of youth remain unchanged.

This article presents an overview of the issues concerning the youth from the perspective of the Japanese Constitution. The term "youth" "usually refers to a male or female aged between 12 and 25 years."[5] However, in this article, in order to clarify the subject in terms of legal differences, the term "youth" (as used in this joint study) is considered an individual who receives legal treatment that differs from that received by an adult, and is called a "minor."[6] Addressing the human rights of minors under the Constitution of Japan, Section I presents the key concepts and Section II presents specific legislative examples and judicial precedents. The appendix lists out constitutional provisions addressing minors' human rights from various countries and presents a comparison with other countries.

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to the human rights of minors. From the 1990s onward, the human rights of minors began to be discussed as general issues under Japanese Constitutional Law.

[3] Supreme Court of Japan First Petty Bench judgment, 1996.7.18, etc.

[4] Supreme Court of Japan Third Petty Bench decision, 2013.2.26; 「損賠訴訟　「髪染め強要で不登校」「生まれつき茶色」　高３　大阪府を提訴」『毎日新聞』2017.10.27, 夕刊 (Lawsuit for Damages, "School Refusal Due to Forced Hair Dyeing," "Regardless of Naturally Brown Hair": Senior Year High School Student Sues Osaka Prefectural Government," *Mainichi Shimbun*, 2017.10.27, Evening Edition), etc.

[5] 小学館大辞泉編集部編『大辞泉　第２版　下巻』小学館, 2012, p.2000 (Shogakukan Daijisen Editorial Department ed., *Daijisen: Second Edition, Volume 2*, Shogakukan, 2012, p.2000).

[6] A "minor" refers to one who has not yet reached the "age of majority" [20 years of age; however, it was changed to 18 years of age – which will enter into force from 2022.4.1 with the Act for Partial Revision of the Civil Code (Act No. 59 of 2018)] as stipulated by the Civil Code (Act No. 89 of 1896). However, as there are laws that identify age groups that differ from those stipulated by the Civil Code, those who receive legal treatment that differs from what adults (i.e., persons who have reached the age of majority), etc., receive are collectively called "minors" in this article.

I Key Concepts

1 *Constitutional Provisions and Interpretation*

The human rights that are applicable based on one's age under the Constitution of Japan include: (1) suffrage (Article 15, Paragraph 3), (2) right to receive compulsory education (Article 26, Paragraph 2), and (3) prohibition of the exploitation of children (Article 27, Paragraph 3).[7] Items (2) and (3) protect minors, whereas item (1) constrains the rights of minors by disqualifying them from suffrage. Some rights under the Japanese Constitution are generously guaranteed, whereas some are constrained, based on the idea that minors are immature and undergo a process of growth and development. These rights are organized based on Japanese constitutional theory in the next section.

2 *Key Concepts Under Japanese Constitutional Theory*

The human rights of minors can be organized from the perspectives of (a) protection and (b) constraint (Table 1). Constraint takes the autonomy of minors into consideration.

YONEZAWA (2008)[8] classified the rights of minors as follows: (a) rights that are especially guaranteed to minors (e.g., right to receive compulsory education, prohibition of the exploitation of children), (b) rights where minors are not necessarily given the same guarantees as are adults (freedom of expression, etc., rights to the freedom of choice on the premise of a certain level of maturity), and (c) rights where minors are given the same guarantees as are adults (e.g., prohibition of torture and cruel punishment). He also noted that the autonomy of minors must be given due consideration with respect to the constraints under (b).

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[7] 赤坂正浩『憲法講義　人権』（法律学講座）信山社, 2011, p.314 (AKASAKA Masahiro, *Constitution Lecture: Human Rights* (Law Course), Shinzansha Publisher, 2011, p.314). Item (2) states that children have the right to receive compulsory education, that is "…people shall be obligated to have all boys and girls under their protection receive ordinary education…," and item (3) guarantees the right of a child not to be abused (*ibid.*, p.314).

[8] 米沢広一「未成年者と人権」大石眞・石川健治編『憲法の争点』（ジュリスト増刊　新・法律学の争点シリーズ 3）有斐閣, 2008, p.76 (YONEZAWA Koichi, "Minors and Human Rights," OISHI Makoto, ISHIKAWA Kenji, ed., Constitutional Issues (Jurist Special Edition: New Legal Issues Series No. 3), Yuhikaku Publishing, 2008, p.76). From the perspective of the human rights of minors, item (c) was omitted from Table 1 because of the particularly problematic nature of items (a) and (b), where minors are given differential legal treatment than that given to adults, etc.

Table 1 **The human rights of minors**

	(a) Protection	(b) Constraint
YONEZAWA (2008)	Right to receive compulsory education, prohibition of the exploitation of children, etc.	Freedoms of expression and religion, right to self-determination, etc. (rights to the freedom of choice on the premise of a certain level of maturity)
SERIZAWA (2009)	Right to receive education, prohibition of the exploitation of children	Suffrage, etc.
SATO (2020)	Prohibition of the exploitation of children, right to receive education, etc.	Freedoms of marriage, abortion, expression, and clothing/hairstyle, to drink alcohol/smoke, etc. (acts involving choice)

(Note) References for YONEZAWA (2008), SERIZAWA (2009), and SATO (2020) are each presented below. In this article, each description is divided between (a) and (b), with rights that serve as an example for each as shown in this table.

(Sources) Created by the author based on 米沢広一「未成年者と人権」大石眞・石川健治編『憲法の争点』(ジュリスト増刊　新・法律学の争点シリーズ 3) 有斐閣, 2008, p.76 (YONEZAWA Koichi, "Minors and Human Rights," OISHI Makoto, ISHIKAWA Kenji, ed., *Constitutional Issues* (Jurist Special Edition: New Legal Issues Series No. 3), Yuhikaku Publishing, 2008, p.76); 芹沢斉「基本的人権の主体」山内敏弘編『新現代憲法入門　第 2 版』法律文化社, 2009, p.80 (SERIZAWA Hitoshi, "Subject of Fundamental Human Rights," YAMAUCHI Toshihiro ed., *New Introduction to Modern Japanese Constitution: Second Edition*, Horitsu Bunka Sha, 2009, p.80); 佐藤幸治『日本国憲法論　第 2 版』(法学叢書 7) 成文堂, 2020, pp.155-157 (SATO Koji, *The Constitution of Japan: Second Edition* (Jurisprudence Series No. 7), Seibundo, 2020, pp.155-157), etc.

SERIZAWA (2009)[9] stated that (a) minors are traditionally placed in a protected position but (b) have been subject to widespread restrictions on their enjoyment of rights. Examples of (a) include the rights to receive equal education[10] and the prohibition of the exploitation of children. Examples of (b) include restrictions on suffrage. He stated that the Convention on the Rights of the Child approves of the position of minors receiving protection and recognizes their right to promote their independence (e.g., right to express opinions according to their stage of growth).

SATO (2020)[11] stated that there is a need (a) to remove environments that interfere with a minor's autonomy (prohibition of the exploitation of children) and actively satisfy

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[9] 芹沢斉「基本的人権の主体」山内敏弘編『新現代憲法入門　第 2 版』法律文化社, 2009, p.80 (SERIZAWA Hitoshi, "Subject of Fundamental Human Rights," YAMAUCHI Toshihiro ed., *New Introduction to Modern Japanese Constitution: Second Edition*, Horitsu Bunka Sha, 2009, p.80).

[10] Under Article 26 of the Constitution of Japan, Paragraph 1 ("All people shall have the right to receive an equal education…") is not a right in which age is a requirement as seen in the text. However, according to the Case charged for the Asahikawa Achievement Test (Supreme Court of Japan Grand Bench judgment, 1976.5.21), the "backdrop of the provisions [in this Article] is that each citizen…has an inherent right to learn; in particular, it is thought that there is an idea that children who are unable to learn by themselves have the right to demand that adults provide them education in order to meet their learning needs."

[11] 佐藤幸治『日本国憲法論　第 2 版』(法学叢書 7) 成文堂, 2020, pp.155-157 (SATO Koji, *The Constitution of Japan: Second Edition* (Jurisprudence Series No. 7), Seibundo, 2020, pp.155-157).

the conditions necessary for such a process (e.g., right to receive education), and that (b) for intervention when freedom may hinder a minor's autonomy (e.g., freedom to drink alcohol/smoke; interventions/constraints on the freedom of minors). Interventions like those under (b) can only be justified in cases where such freedom "would so permanently harm personal autonomy itself in order to be irreparable" ("limited paternalistic constraints").[12] This is derived from the idea that fundamental human rights originate from personal autonomy.[13]

The Japanese Constitution authorizes legislators to make concrete decisions on whether or not to set age groups or determine ages for legal treatment with the exception of situations concerning the (1) suffrage (Article 15, Paragraph 3), (2) right to receive compulsory education (Article 26, Paragraph 2), and (3) prohibition of the exploitation of children (Article 27, Paragraph 3).[14] Laws that identify such age groups can be organized in the same manner as presented above. AKASAKA (2011)[15] stated that there are laws with tendencies to (a) protect minors (e.g., Labor Standards Act,[16] Child Welfare Act,[17]

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[12] Paternalism refers to the situation in which "the state interferes with the behavior of individuals in a manner similar to when parents interfere with and take care of children who do not have the ability to become independent" [野中俊彦ほか『憲法Ⅰ　第 5 版』有斐閣, 2012, p.221 (NONAKA Toshihiko et al., *Japanese Constitutional Law 1: Fifth Edition*, Yuhikaku Publishing, 2012, p.221)]. It is not necessarily the case that "limited paternalistic constraints" are recognized for minors alone. However, when they target minors, there is a need to "develop and promote the process of maturation of decisions and actions, and to contribute toward autonomous existence." It is understood as justified only when "the result of behaviors lacking in mature judgment is likely to seriously and permanently weaken a minor's ability to achieve his or her own goals in the long term" [佐藤　同上, pp.154, 156 (SATO, *ibid*., pp.154, 156); 佐藤幸治「未成年者と基本的人権―主として「選挙運動」の自由に関連して―」佐藤幸治ほか『ファンダメンタル憲法』有斐閣, 1994, pp.31-33 (SATO Koji, "Minors and Fundamental Human Rights: Primarily Regarding the Freedom for 'Election Campaigning,' SATO Koji et al., *Fundamental Japanese Constitution*, Yuhikaku Publishing, 1994, pp.31-33)].

[13] According to this position, "the respect as individuals [in Article 13 of the Constitution of Japan]…refers to…the idea of giving the utmost respect to each person (individual) while intending to form each irreplaceable life as a subject of 'personality' and 'rights' that represent the dignity of freedom and autonomy (…as an existence of personal autonomy), while cooperating with others...The right to comprehensively guarantee the rights and freedoms that are important for continuing such an existence" is the right to the pursuit of happiness ("the right of basic personal autonomy") in the same Article, and "each fundamental human right listed in Chapter 3 of the Constitution of Japan is derived from this 'right of basic personal autonomy.'" [佐藤　前掲注(11), pp.139, 196-197 (SATO, *op.cit.*(11), pp.139, 196-197)].

[14] 赤坂　前掲注(7), p.314 (AKASAKA, *op.cit*.(7), p.314).

[15] *ibid*., p.315.

[16] Act No. 49 of 1947 stipulates that "an employer must not employ a child until the end of the first 31st of March that falls on or after the day on which the child reaches 15 years of age" (Article 56, Paragraph 1), etc.

[17] Act No. 164 of 1947 stipulates the basic aspects of child welfare and the various systems necessary for those aspects; and that all children (aged under 18 years) have the right to be equally guaranteed welfare in the spirit of the Convention on the Rights of the Child (Articles 1 and 4, Paragraph 1), etc.

Juvenile Act,[18] Act on the Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, and the Protection of Children,[19] Act on the Prevention, etc. of Child Abuse[20]) and laws with tendencies to (b) regulate behavior (Civil Code,[21] Act on the Prohibition of Smoking by Minors,[22] Minor Drinking Prohibition Act,[23] Public Offices Election Act[24]), "protection and restrictions are two sides of the same coin, so such distinctions are only relative in nature."

As described above, minors are given special legal protection and are subject to certain constraints. Protection and constraint are two aspects of legal treatment with the objective of the future autonomy of minors and can be understood as two sides of the same coin.

3 *Concepts Under the Educational Law and Discussions in the United States*

The above text is organized based on the views of scholars of Japanese Constitutional Law. However, concepts in Japanese educational law, which governs this issue, and discussions in the United States, which Japanese constitutional scholars are thought to have referenced,[25] are also examined here. With respect to protection and constraint, educational and educational law scholars have been interested in (a) protection (ensuring the "human rights inherent in the child"), whereas Japanese Constitutional Law scholars have been interested in (b) constraint (appropriateness of constraints on "general human rights" that should be guaranteed in common with adults).[26] However, even in educational law, the "human rights of a child" can be broadly classified into the right to (1) survival (guarantee of survival, life, and development) and (2) liberty (support for independence, and guarantee of the expansion of liberty). Item (1) has components of item (2), and vice versa, so it is said that "the rights of children are composite rights with the objective of forming personal liberty in the child."[27] Items (1) and (2) are primarily related to (a)

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[18] Act No. 168 of 1948 seeks to implement rehabilitation measures for delinquent juvenile (aged under 20 years) and special measures for juvenile criminal cases (Articles 1 and 2, Paragraph 1).

[19] Act No. 52 of 1999 aims to protect the rights of children (aged under 18 years) by regulating acts relating to child prostitution and pornography (Article 1; Article 2, Paragraph 1).

[20] Act No. 82 of 2000 aims to promote measures pertaining to the prevention of child abuse and contribute toward the protection of the rights and interests of children (aged under 18 years) (Articles 1 and 2).

[21] Act No 89 of 1896 imposes restrictions on the legal actions (e.g., conclusion of contracts) of minors (see Note (6) above) (Article 5), marriageable age (Article 731), etc.

[22] Act No. 33 of 1900 prohibits smoking by persons aged under 20 years (Article 1), etc.

[23] Act No. 20 of 1922 prohibits the consumption of alcohol by persons aged under 20 years (Article 1, Paragraph 1), etc.

[24] Act No. 100 of 1950 prohibits participation in election campaigns for persons aged under 18 years (Article 137-2, Paragraph 1), etc.

[25] See 佐藤　前掲注(12), pp.33-34 (SATO, *op.cit.*(12), pp.33-34); 赤坂　前掲注(1), pp.18-19 (AKASAKA, *op.cit.*(1), pp.18-19).

[26] 赤坂　同上, pp.17-18 (AKASAKA, *ibid.*, pp.17-18).

[27] 牧柾名「子どもの人権保障」日本教育法学会編『教育法学辞典』学陽書房, 1993, p.316

protection and (b) constraint (which consider the autonomy of the minor), respectively.

According to YONEZAWA (1990),[28] who organized a discussion on the "rights of children" in the US, articles with the words "the rights of children" in their titles began to emerge from the mid-19th century onward. At the time, the focus was solely on the protection of children ("child protection approach"). This trend was maintained even at the start of the 20th century. However, the "child rights movement" began to flourish in the 1960s under the influence of movements that sought to eliminate racial and sex-based discrimination. By the 1970s, a "child liberation approach" was seen, which insisted that children be guaranteed the same rights as adults. Many theories critiqued the "child liberation approach," and were dissatisfied with the "child protection approach," too. Many theories shared common characteristics as they (a) considered the protection of children while (b) also trying to respect their autonomy to the maximum extent possible ("coordinated autonomy approach").

4 *Convention on the Rights of the Child*

The discussion on "the rights of the child" in the US influenced the Convention on the Rights of the Child,[29,30] which considers children (all persons aged under 18 years) subject

(MAKI Masana, "Assurance of Human Rights for Children," Japan Education Law Association ed., *Education Law Dictionary*, Gakuyo Shobo, 1993, p.316).

[28] 米沢広一「「子どもの権利」論」佐藤幸治・初宿正典編『人権の現代的諸相』有斐閣, 1990, pp.42-62 (YONEZAWA Koichi, "Theory of the 'Rights of Children'," SATO Koji, SHIYAKE Masanori eds., *Modern Aspects of Human Rights*, Yuhikaku Publishing, 1990, pp.42-62). Additionally, see 森田明『未成年者保護法と現代社会―保護と自律のあいだ―　第 2 版』有斐閣, 2008, pp.3-22 (MORITA Akira, *Minor Protection Act and Modern Society: Between Protection and Autonomy, Second Edition*, Yuhikaku Publishing, 2008, pp.3-22).

[29] The English term used is "the Child." (In Japanese, it is known as "Jido".) It is also translated as "Kodomo." It was stated that "in teaching and instruction regarding this Convention, it is thought that the terms 'Jido' and 'Kodomo' are appropriate" [文部事務次官「「児童の権利に関する条約」について（通知）」（文初高第 149 号）1994.5.20 (Administrative Vice-Minister of Education, "Regarding the 'Convention on the Rights of the Child' (Notification)" (No. 149), 1994.5.20)]. (In Japan, in particular cases, "Jido" and "Kodomo" also take an ideological meanings.)

[30] See 濱川今日子「子ども観の変容と児童権利条約」国立国会図書館調査及び立法考査局『青少年をめぐる諸問題　総合調査報告書』（調査資料 2008-4） 2009, pp.68-71 (HAMAKAWA Kyoko, "Child-Image and the Convention on the Rights of the Child," Research and Legislative Reference Bureau, National Diet Library, *Attempts at a Solution for Juvenile Problems: General Research Report* (Research Material 2008-4), 2009, pp.68-71); 森田　前掲注(28), pp.97-126 (MORITA, *op.cit.*(28), pp.97-126). Additionally, the US, which led discussions on the Convention on the Rights of the Child, has not yet ratified the Convention [「子どもの権利条約　締約国」日本ユニセフ協会ウェブサイト ("Signatories to the Convention on the Rights of the Child," Japan Committee for UNICEF website)]. This is because (1) it is difficult to recognize social and welfare rights as rights in the US, (2) there is a deep-rooted belief in the idea that recognizing the rights of children does not protect the interests of children and is incompatible with good families, and (3) there is some resistance to having domestic problems decided by

to protection and entitled to rights, and stipulates their rights comprehensively. The Convention was adopted by the UN General Assembly in 1989. Japan ratified it in 1994 (effective May 22, 1994). The rights stipulated in the Convention are based on the common foundation of the inherent right to life (Article 6) and the rights to both name and nationality (Article 7). These include the rights to: (1) life, (2) development, (3) protection, (4) participation, and (5) rights under particularly difficult circumstances[31] (Table 2). Rights (1), (2), (3), and (5) are primarily related to (a) protection, whereas Right (4) is primarily related to (b) constraint (that considers the autonomy of minors).

Table 2 **Major rights stipulated in the Convention on the Rights of the Child**

Common foundational rights	・Right to life (Article 6) ・Rights to name and nationality (Article 7)
(1) Right to life	・Right to enjoy highest attainable standard of health (Article 24) ・Right to benefit from social security (Article 26) ・Right to adequate standard of living (Article 27)
(2) Right to development	・Responsibilities of both parents, etc., for the upbringing and development of the child, state assistance (Article 18) ・Right to education (Article 28) ・Right to rest, leisure, play, cultural life, etc. (Article 31)
(3) Right to protection	・Protection from violence while in the care of parent(s), etc. (Article 19) ・Protection from economic exploitation and performance of any work that is likely to be hazardous, etc. (Article 32) ・Protection from sexual exploitation and abuse (Article 34)
(4) Right to participation	・Right to express his or her own views (Article 12) ・Freedom of expression (Article 13) ・Freedom of thought, conscience, and religion (Article 14)
(5) Rights of children under particularly difficult circumstances	・Protection and assistance for refugee children, etc. (Article 22) ・ Right of the mentally or physically disabled child to special care, state assistance (Article 23) ・Rights of minorities or persons of indigenous origin to his or her own culture, religion, and language (Article 30)

(Sources) Created by the author based on the Convention on the Rights of the Child; 喜多明人「子どもの権利条約」市川昭午・永井憲一監修『子どもの人権大辞典』エムティ出版, 1997, p.322 (KITA Akito, "Convention on the Rights of the Child," ICHIKAWA Shogo, NAGAI Kenichi eds., *Dictionary on the Rights of the Child*, MT Publishing, 1997, p.322), etc.

After the Convention was ratified, local governments across Japan established ordinances on the rights of the child. The Convention is cited by scholars as an underlying principle for child welfare. Issues concerning "the rights of children" often emerge as a result of the gap between the law and its implementation, the lack of financial resources to

Conventions [樋口範雄「アメリカ」石川稔・森田明編『児童の権利条約―その内容・課題と対応―』一粒社, 1995, p.496 (HIGUCHI Norio, "United States of America," ISHIKAWA Minoru, MORITA Akira eds., *Convention on the Rights of the Child: Its Content, Issues, and Responses*, Ichiryusha, 1995, p.496)].

31 喜多明人「子どもの権利条約」市川昭午・永井憲一監修『子どもの人権大辞典』エムティ出版, 1997, p.322 (KITA Akito, "Convention on the Rights of the Child," ICHIKAWA Shogo, NAGAI Kenichi eds., *Dictionary on the Rights of the Child*, MT Publishing, 1997, p.322).

implement rights, and the use of "the rights of children" by adults as a ruse to pursue their own interests. However, it is meaningful to constantly use the term "the rights of children" to avoid self-righteousness and selfishness among adults.[32]

5 *Position of Guardians*

Adults around minors are concentrically organized, starting from the home to the school, to the community, and then to the state. In many cases, guardians are involved. The Convention on the Rights of the Child also states that "parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child" (Article 18, Paragraph 1). Previously, this article presented the human rights of minors from the perspectives of protection and constraint. Examining the positioning of guardians is essential while maintaining this arrangement. The human rights of minors must be determined not by a bipolar structure of "minor (individual)—state" (as with normal Japanese constitutional issues), but rather a tripolar structure of "minor—parent—state." With this structure, the protection of minors and formation of autonomous abilities will be primarily carried out under the care of parent(s), etc., and will not immediately fall under state intervention.[33]

UCHINO (2005)[34] classified restrictions on the human rights of minors as cases where: (1) the consent or agency of parent(s), etc., is required to exercise human rights (e.g., restrictions on property rights under the Civil Code), and (2) a certain human right is not recognized (e.g., disqualification from suffrage).

SHIBUTANI (2017)[35] cited the following as justifications for the restriction and protection of minors: (1) right of the guardian to raise and educate a minor, and (2) supplementary paternalism by the government. He stated that state intervention in (2) is strictly supplementary and that the essence of the issue is coordination between the right of

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[32] 大江洋「子どもの権利を問うこと」愛敬浩二編『講座　人権論の再定位　2　人権の主体』法律文化社, 2010, pp.146-156 (OE Hiroshi, "Questioning the Rights of the Child," AIKYO Koji ed., *Lecture: Relocalization of Human Rights Theory 2: Subject of Human Rights*, Horitsu Bunka Sha, 2010, pp.146-156); 大江洋『子どもの道徳的・法的地位と正義論―新・子どもの権利論序説―』法律文化社, 2020, pp.16-25, 195-199 (OE Hiroshi, *Moral and Legal Status of Children and Justice Theory: Introduction to New Theory of the Rights of Children* , Horitsu Bunka Sha, 2020, pp.16-25, 195-199).

[33] 米沢　前掲注(8), p.77 (YONEZAWA, *op.cit.*(8), p.77).

[34] 内野正幸『憲法解釈の論点　第 4 版』日本評論社, 2005, p.40 (UCHINO Masayuki, *Issues Regarding Interpretation of the Japanese Constitution: Fourth Edition*, Nippon Hyoron Sha, 2005, p.40). The "intervention of public authorities for the objective benefit of children is a guarantee of the rights of children in a simple sense but can also be constitutionally considered a restriction on human rights," so the "prohibition in principle of the employment of persons aged under 15 years" is included as an example of human rights restrictions (when a given human right itself is not recognized) (*ibid.*, p.40).

[35] 渋谷秀樹『憲法　第 3 版』有斐閣, 2017, pp.110, 175 (SHIBUTANI Hideki, *Japanese Constitutional Law: Third Edition*, Yuhikaku Publishing, 2017, pp.110, 175).

the guardian to raise and educate a minor and the freedom and rights of the minor. Stipulations like the restrictions on juridical acts by minors (e.g., conclusion of contracts) (Civil Code Article 5) and the determination of residence by parental authority (Civil Code Article 821) can then be justified under (1), whereas those such as the loss of parental authority in cases where abuse, etc., occurs (Civil Code Article 821) can be justified by (2). The "minor—parent—state" structure surrounding (a) protection and (b) constraint must also be considered while looking at specific cases like the prevention of child abuse and regulation of harmful information on the Internet as discussed in Section II.

II Specific Cases

This section examines specific legislative examples and judicial precedents of the (a) protection of and (b) constraint imposed on the rights of minors as mentioned under Section I.[36] However, the classification is relative.[37] There are many cases in which both aspects are recognized. Cases that are mainly thought to relate to protection or constraint can be classified as those in which new special protections or constraints (that differ from those of adults) were found necessary and in which existing special protections or constraints became a problem.

1 *Cases Relating to Protection*

(1) Cases Where New Special Protections Were Needed

Recent legislative examples include those that relate to the prevention of child abuse, prohibition of child prostitution and pornography, promotion of policies governing child poverty, and prevention of bullying (all legislation sponsored by Diet members).[38]

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[36] 堀口悟郎「子どもの人権」横大道聡編著『憲法判例の射程　第2版』弘文堂, 2020, pp.41-45 (HORIGUCHI Goro, "Rights of the Child," YOKODAIDO Satoshi ed., *Range of Constitutional Precedent: Second Edition*, Kobundo Publishers, 2020, pp.41-45) stated that precedents could be organized by the classification between "human rights with low degree of guarantees to children" (e.g., freedom of knowledge) and "human rights with high degree of guarantees" (e.g., right to learn).

[37] See 赤坂　前掲注(7), p.315 (AKASAKA, *op.cit.*(7), p.315); 内野　前掲注(34), p.40 (UCHINO, *op.cit.*(34), p.40).

[38] See the Act for Promoting the Support for the Development of Children and Youth (Act No. 71 of 2009), Child and Child Care Support Act (Act No. 65 of 2012), Act for the Promotion of the Employment of Youth (Act No. 98 of 1970; name changed from the previous Youth Labor Welfare Act with an amendment in 2015), Act for the Promotion of Studying and Employment of Youth through the Promotion of Regional Universities and Creation of Employment Opportunities for the Youth (Act No. 37 of 2018), etc.

(i) Prevention of Child Abuse

The Act on the Prevention, etc., of Child Abuse enacted in 2000 governs a role of child guidance centers, which are administrative institutions established by prefectures, and addresses human rights violations by guardians such as parents against the life, body, personality, etc., of children (under the age of 18 years) by removing the guardians and protecting the human rights of the children involved. Traditional Japanese Constitutional theory has sought to both respect the autonomy of parent-child relationships and minimize state intervention; the Act on the Prevention, etc., of Child Abuse constitutes a legal system that is the exact opposite of the conventional ways of thinking and is compatible with modern social circumstances.[39]

The Civil Code provision on the loss of parental authority (Article 834) described at the end of Section I was amended in 2011. Before the amendment, the cause of the loss of parental authority was "when the father or mother misused their parental authority or engaged in gross misconduct." After the amendment, the text was changed to "if a father or mother has abused his/her child or abandoned the child in bad faith, or a child's interests are extremely harmed due to considerable difficulty or inappropriateness in the exercise of parental authority by his/her father or mother." The amendment of related provisions, including the present one, was said to have been made from the perspective of protecting the rights and interests of children, in recognition of the fact that child abuse remains a serious social problem.[40]

(ii) Prohibition of Child Prostitution and Pornography

The Act on the Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, and the Protection of Children was adopted in 1999, against the backdrop of the Convention on the Rights of the Child, which provided for protection from sexual exploitation and abuse (Article 34), and the fact that Enjyo-kousai (schoolgirl prostitution) became a social problem, and many countries punished these acts through legislation.[41] The Act was amended in 2004 and 2014 to raise and establish existing and

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[39] 赤坂　前掲注(1), pp.20-22 (AKASAKA, *op.cit.*(1), pp.20-22). It is significant that public authorities have been given a legal basis for active intervention in cases of "domestic" abuse [巻美矢紀「公私区分―DV 法、児童虐待―」『法学セミナー』581 号, 2003.5, p.28 (MAKI Misaki, "Public-Private Classification: Domestic Violence Act, Child Abuse," *Law Seminar*, 581, 2003.5, p.28)].

[40] 佐野文規「法令解説　児童虐待防止のための親権制度の見直し―親権停止制度の新設、未成年後見制度等の見直し等　民法等の一部を改正する法律（平成 23 年法律第 61 号）―」『時の法令』1900 号, 2012.2.28, pp.17-19 (SANO Fuminori, "Legal Commentary: Review of Custody System for Preventing Child Abuse: New Establishment of Custody Suspension System, Review of Minor Guardianship System, Etc.: Act for Partial Revision of the Civil Code, Etc. (Act No. 61 of 2011)," *Prevailing Law*, 1900, 2012.2.28, pp.17-19).

[41] 第 145 回国会参議院法務委員会会議録第 8 号　平成 11 年 4 月 27 日　p.1 (Records of

new statutory penalties, respectively. The latter was meant for the so-called "simple possession" of child pornography (possession "for the purpose of satisfying one's sexual curiosity" without the intention of supplying to others, etc.). The Act prohibited child prostitution, the possession of child pornography, etc. (Article 3-2) and stipulated that, "In applying this Act, care must be taken not to improperly infringe upon the rights and freedoms of citizens relating to academic research, cultural and artistic activity and press, and the Act is not to be abused for other purposes deviating from the original purpose" (Article 3).

(iii) Promotion of the Policy on Child Poverty

The Act on the Promotion of the Policy on Child Poverty enacted in 2013 guaranteed children the opportunity to receive education and break the "chain of poverty." The enactment was passed against the backdrop of the impact of child poverty and the negative influence of school attendance aid as a result of the reduction in the budget for livelihood protection.[42] It provided for Educational Support (Article 10) and Support for a Stable Lifestyle (Article 11), Employment Support to Stabilize and Improve the Working Life of Guardians (Article 12), and Economic Support (Article 13).

In addressing educational disparities as a result of poverty, there was a case where an action by the Fukushima City Welfare Office Director, which reduced the livelihood protection expense because of a grant-type scholarship received by a high school student in a livelihood protection household (the scholarship was treated as income), was considered illegal (Fukushima District Court judgment, 2018.1.16. City confirmed without appeal).

(iv) Prevention of Bullying

The Act for the Promotion of Measures to Prevent Bullying enacted in 2013 sought to promote a policy for the prevention of bullying "in light of the fact that bullying may cause serious risks to the life and person of victimized children, etc., not limited to significantly infringing their right to receive education and exerting a serious influence on their sound

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Meeting No. 8 of the Committee on Judicial Affairs, House of Councillors, 145th Session of the National Diet of Japan, 1999.4.27, p.1). Later, the Supreme Court of Japan stated that the punishment by the application of this Act did not violate Article 21 (freedom of expression), etc., of the Constitution of Japan, in light of the Case charged for the Violation of the Fukuoka Prefectural Ordinance for the Protection and Development of Youths (described in Section II-2(2)(v)), etc. (Supreme Court of Japan Second Petty Bench judgment, 2002.6.17).

42 近藤怜「法令解説　教育を受ける機会を保障し、「貧困の連鎖」を断ち切るための「子どもの貧困対策法」の制定―子どもの貧困対策の推進に関する法律（平成 25 年法律第 64 号）―」『時の法令』1938 号, 2013.9.30, pp.23-24 (KONDO Rei, "Legal Commentary: Enactment of the 'Act on the Policy on Child Poverty' in Order to Guarantee Opportunities to Receive Education and Break the 'Chain of Poverty': Act on the Promotion of Policy on Child Poverty (Act No. 64 of 2013)," *Prevailing Law*, 1938, 2013.9.30, pp.23-24).

mental and physical growth and development of personality." (Article 1); and stipulated basic policy principles, the prohibition of bullying, as well as the responsibilities of related parties. This Act emerged against the backdrop of renewed public interest in bullying after incidents such as the one in 2011, where a junior high school student in Otsu City, Shiga, died by suicide after he was bullied.[43] While explaining the purpose of this Act, its sponsors stated that "there is a need for an Act that establishes the basic concepts and system…so that the will [for the prevention of bullying] is shared by the entire nation and to prevent it from being weathered away (text within [ ] is supplemented by the author; the same applies below)."[44]

(2) Cases Where Existing Special Protections Became a Problem

Prominent cases include judicial precedents pertaining to the regulations on reporting crimes committed by juveniles. In addition, the Juvenile Act has been repeatedly reviewed in recent years. Under the Act, a "juvenile" is a person aged less than 20 years, and an "adult" is a person aged 20 years and above (Article 2, Paragraph 1).

(i) Regulations on Reporting Crimes Committed by Juveniles

Article 61 of the Juvenile Act prohibits identifiable reporting (reporting "from which [the identity of] a person subject to a hearing and decision of a family court, or against whom public prosecution has been instituted for a crime committed as a Juvenile, could be inferred from the name... etc."). Crimes are matters of serious public concern, and their reporting should be guaranteed under Article 21, Paragraph 1 of the Constitution of Japan (freedom of expression); therefore, when a criminal is an adult, revealing the real name in media reports is allowed if the requirements for the exemption of defamation charges[45] are satisfied. In contrast, Article 61 of the Juvenile Act prohibits identifiable reporting; it is conceivable that there is some interest protected by law, unlike the cases of adults.[46]

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[43] 梶山知唯「法令解説　いじめから一人でも多くの子供を救うために―いじめ防止対策推進法（平成 25 年法律第 71 号）―」『時の法令』1938 号, 2013.9.30, pp.4-6 (KAJIYAMA Tomotada, "Legal Commentary: In Order to Protect as Many Children as Possible from Bullying: Act for the Promotion of Measures to Prevent Bullying (Act No. 71 of 2013)," *Prevailing Law*, 2013.9.30, pp.4-6).

[44] 第 183 回国会衆議院文部科学委員会議録第 7 号　平成 25 年 6 月 19 日　p.2 (Records of Meeting No. 7 of the Committee on Judicial Affairs, House of Councillors,183rd Session of the National Diet of Japan, 2013.6.19, p.2).

[45] (1) Alleging matters of public interest, (2) solely for the benefit of the public, (3) proof of truth (Penal Code (Act No. 45 of 1907) Article 230-2).

[46] 上村都「少年事件の推知報道―長良川事件報道訴訟―」長谷部恭男ほか編『憲法判例百選 I　第 7 版』（別冊 Jurist　No.245）有斐閣, 2019, p.147 (UEMURA Miyako "Identifiable Reporting in Juvenile Incidents: Lawsuit for Reporting on the Nagara River Incident," HASEBE Yasuo et al. eds., *Top 100 Constitutional Precedents 1, Seventh Edition* (Separate Volume Jurist No. 245), Yuhikaku Publishing, 2019, p.147).

The Case pertaining to the reportage on the Nagara River incident (Nagoya High Court judgment, 2000.6.29), which recognized the juvenile's "right to grow and develop" (right to grow soundly in the process of growth and development) as a human right based on Article 13 of the Constitution of Japan and identified it as an interest protected by law under Article 61 of the Juvenile Act along with the rights of reputation and privacy. The judgment narrowed down the permissible range of identifiable reporting by stating that it is permitted only when there are special circumstances in which the protection of social interest must be clearly prioritized over these rights (it was determined that the article in the weekly magazine that reported on the juvenile crime amounted to identifiable reporting prohibited by Article 61 of the Juvenile Act and that there were no special circumstances that would have permitted such reporting, so the juvenile's claim for damages was partially accepted. The Supreme Court of Japan did not judge the interest protected by law under Article 61 of the Juvenile Act and the relationship between this Article and Article 21, Paragraph 1 of the Constitution of Japan[47]).

In contrast, the Case charged for the Sakai City Killing Spree and Real Name Reporting Incident (Osaka High Court judgment, 2000.2.29) stated that Article 61 of the Juvenile Act does not grant the right not to have one's real name reported in the media and allowed for a relatively wide range of exceptions for reporting regulations (the first hearing in which claims for damages by the juvenile side against the publisher were partially accepted was revoked; and this was confirmed by the withdrawal of appeal).

(ii) Review of the Juvenile Act

In recent years, the Juvenile Act has been amended repeatedly in favor of stricter punishments.[48] An amendment in 2000 reduced the age at which criminal disposition was possible (from 16 to 14 years). An amendment in 2007 reduced the age at which referrals to juvenile training schools were possible (from 14 to "roughly 12 years"). An amendment in 2008 introduced a system in which victims of certain serious cases could listen to juvenile court hearings. An amendment in 2014 raised the sentence for juvenile criminal

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[47] The Supreme Court was stated that the article in this weekly magazine was not one where an unspecified number of members of the general public who had no acquaintance with the individual in question would be able to identify him or her and that it did not violate Article 61 of the Juvenile Act. The original judgment was reversed and remanded as it was judged not to have any special circumstances regarding reputation or privacy (Supreme Court of Japan Second Petty Bench judgment, 2003.3.14). The remand appeal judgment (Nagoya High Court judgment, 2004.5.12) denied the establishment of a tort by the publisher given the vicious, brutal, and serious nature of the crime, and canceled the lost case sections of the publisher in the original judgment (confirmed by the dismissal of appeal, etc.).

[48] Revisions owing to the Act No. 142 of 2000, Act No. 68 of 2007, Act No. 71 of 2008, and Act No. 23 of 2014 [「少年法改正の経過」（法制審議会第 178 回会議　配布資料 7）2017.2.9. 法務省ウェブサイト ("Progress of Revisions to the Juvenile Act" (178th Meeting of the Legislative Council, Distributed Material 7), 2017.2.9, Ministry of Justice website)]. Includes amendments of related Acts like the Juvenile Training School Act (Act No. 169 of 1948).

cases (e.g., the heaviest fixed-term sentence was changed from imprisonment for 5–10 years to 10–15 years). There have been discussions on reducing the applicable age of the Act (i.e., age of "juveniles") from less than 20 to less than 18 years, with amendments to the Act being proposed. This amendment stated that people aged 18 and 19 years should be treated differently when compared to those aged 20 years and above, while implementing stricter punishments to some degree (including the manner in which reporting should be conducted).[49] It is generally necessary to distinguish between the use of "separate" and "same-level" treatment relative to adults with respect to the legal treatment of minors; however, there are often cases of intense disagreement while stipulating specific kinds of treatment, as is the case with the Juvenile Act.[50]

2 *Cases Pertaining to Constraints*

(1) Cases Where New Special Constraints Were Needed

Recent legislative examples (including ordinances) include those pertaining to regulations concerning harmful information on the Internet and computer games, smartphones, etc.

(i) Regulations Concerning Harmful Information on the Internet

The Act on Establishment of Enhanced Environment for Youth's Safe and Secure Internet Use was sponsored by Diet members in 2008.[51] It sought to filter (i.e., impose viewing restrictions on) programs providing harmful information. Examples of harmful information include information that (1) directly and explicitly induces crimes, etc., or suicide; (2) significantly arouses or stimulates sexual desire; and (3) comprises extremely cruel content (Article 2, Paragraph 4). However, to give due consideration to the freedom of expression, the national government is expected to respect the voluntary and independent efforts of the private sector (Article 3, Paragraph 3); and (according to the "Explanation of Relevant Laws and Regulations" provided by the Cabinet Office et al in 2018.) the private sector, such as related businesses and guardians, specifically determines all that constitutes harmful information.[52]

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[49] 「諮問第 103 号に対する答申案」（法制審議会第 188 回会議　配布資料 2）2020.10.29. 同上 ("Draft Report for Consultation No. 103" (188th Meeting of the Legislative Council, Distributed Material 2), 2020.10.29, *ibid.*).

[50] 赤坂　前掲注(1), p.26 (AKASAKA, *op.cit.*(1), p.26).

[51] Act on Establishment of Enhanced Environment for Youth's Safe and Secure Internet Use (Act No. 79 of 2008).

[52] 内閣府ほか「青少年が安全に安心してインターネットを利用できる環境の整備等に関する法律　関係法令条文解説」2018.1, pp.3-4 (Cabinet Office et al., "Act on Establishment of Enhanced Environment for Juveniles' Safe and Secure Internet Use: Explanation of Relevant

On the Internet, problems are not limited to the simple viewing of harmful information and include sexual damage through contact with strangers on so-called “dating sites” and social networking services (SNS). The Act on Regulation on Soliciting Children by Using Opposite Sex Introducing Service on Internet[53] was enacted in 2003. It prohibits the invitation of children (people aged under 18 years) to be dating partners of people of the opposite sex (Article 6). However, subsequently, there was an increase in the damage caused through general SNS that did not take place on dating sites. A scholar pointed out that measures were taken by related businesses, but even the thorough use of filtering had a limited scope, and the home environment was important as it served as the fundamental backdrop for this issue.[54]

(ii) Regulations Concerning Computer Games, Smartphones, Etc.

The Kagawa Prefectural Ordinance for Internet and Game Addiction Countermeasures (2020 Ordinance No. 24) was adopted in March 2020. It stipulated the guidelines for the usage time of computer games and smartphones (“While using computer games, the usage time per day should be up to 60 minutes…while…using smartphones, etc., …the usage time for children who have not completed compulsory education is until 21:00…the usage time for all other children is until 22:00”) (Article 18, Paragraph 2). The Kagawa Bar Association requested the immediate removal of this provision because it had the potential to violate the constitutional right to self-determination. A high school student and his mother in Takamatsu City, Kagawa filed a lawsuit against the Prefecture. However, the Kagawa Prefectural Assembly Secretariat stated that it did not regulate usage time, etc., but rather indicated guidelines for rules to be established by guardians.[55]

Laws and Regulations,” 2018.1, pp.3-4). Information corresponding to item (1) “also includes illegal information that goes against the penal regulations relating to the arrangement and solicitation of acts that come in contact with punitive laws in individual laws,” such as the Act on the Regulation of Soliciting Children by Using Opposite Sex Introducing Services on the Internet as described later (*ibid.*, p.4).

53 Act on Regulation on Soliciting Children by Using Opposite Sex Introducing Service on Internet (Act No. 83 of 2003).

54 曽我部真裕「共同規制―携帯電話におけるフィルタリングの事例―」ドイツ憲法判例研究会編『憲法の規範力とメディア法』(講座　憲法の規範力　第 4 巻) 信山社, 2015, p.105 (SOGABE Masahiro, “Joint Regulation: Examples of Filtering in Mobile Phones,” Germany Constitutional Precedent Study Group ed., *Constitutional Normative Power and Media Law* (Lecture: Constitutional Normative Power, Volume 4), Shinzansha Publisher, 2015, p.105).

55 香川県弁護士会会長「「香川県ネット・ゲーム依存症対策条例」に対する会長声明」2020.5.25. 香川県弁護士会ウェブサイト (Kagawa Bar Association President, “President’s Statement on ‘Kagawa Prefectural Ordinance for Internet Game Addiction Countermeasures’,” 2020.5.25, Kagawa Bar Association website); 「ゲーム条例「憲法違反」　高 3 提訴」『朝日新聞』2020.10.1 (“Game Ordinance ‘Violation of the Constitution’, Senior Year High School Student Sues,” *Asahi Shimbun*, 2020.10.1); 香川県議会事務局政務調査課「香川県ネット・ゲーム依存症対策条例」『自治体法務研究』61 号, 2020.夏, p.65 (Kagawa Prefectural Assembly Secretariat Administrative Research Division, “Kagawa Prefectural Ordinance for

Examples before this ordinance included the Hyogo Prefectural Ordinance for Youth Protection (1963 Ordinance No. 17), which required support for creating rules regarding Internet usage time, etc. (Article 24-5, added by the 2016 amendment); the Comprehensive Ishikawa Prefectural Ordinance for the Children of Ishikawa (2007 Ordinance No. 18), which required parents to take efforts not to allow mobile phones, etc., especially for elementary and junior high school students, as a general rule (Article 33-2, Paragraph 3, added by the 2009 amendment).

(2) Cases Where Existing Special Constraints Became a Problem

Recent legislative examples of these cases include the reduction in the voting age, etc. Although these judgments were passed in the 1980s, prominent judicial precedents pertaining to schools included those on regulations of hairstyles through school ordinances and descriptions of student activist history in school reports;[56] and judicial precedents pertaining to prefectural ordinances included those on the regulation of harmful books and prohibition of obscene acts.

(i) Reduction in Voting Age, Etc.

The Act for the Partial Revision of the Public Offices Election Act, etc. (Act No. 43 of 2015) reduced the voting age from 20 to 18 years (enforced 2016.6.19). The Act for Partial Revision of the Act on Procedures for Amendment of the Constitution of Japan (Act No. 75 of 2014) reduced voting age in a referendum on a constitutional amendment from 20 to 18 years (enforced 2018.6.21). The Act for the Partial Revision of the Civil Code (Act No. 59 of 2018) reduced the age of majority in the Civil Code from 20 to 18 years (to be enforced from 2022.4.1).

These reviews were triggered by two factors. First, the Act on Procedures for Amendment of the Constitution of Japan (Act No. 51 of 2007) stipulated that the voting age for a referendum on a constitutional amendment was 18 years (Article 3). Second, the Supplementary Provisions to this Act stipulated that the voting age, age of majority, etc., were all to be examined before the Act entered into force in 2010, with all necessary legal

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Internet Game Addiction Countermeasures," *Municipal Legal Research*, 61, 2020.Summer, p.65). "Internet game addiction" refers to the state in which one's every day or social life is hindered as a result of being absorbed in the Internet or in computer games (*ibid.* ordinance, Article 2).

[56] Addressing school ordinances regulating motorcycles, one Case charged for the "Three Principles of Motorcycles" (i.e., do not get a license, ride, or buy) (Supreme Court of Japan Third Petty Bench judgment, 1991.9.3), and decided that the school ordinance could not be considered unreasonable in terms of social norms. It noted that a recommendation for voluntary withdrawal because of a violation was not illegal. The Case charged for Motorcycle-related Withdrawal from School at Shutoku High School (Tokyo High Court judgment/confirmation, 1992.3.19) decided that the school ordinance was reasonable but the withdrawal from school imposed on the student was illegal.

measures to be taken, and the referendum voting age had to be set to 20 years or older until such measures are taken regardless of Article 3 (Supplementary Provision Article 3). The reason for this bill as stated by its sponsors included that the referendum voting age in many foreign countries was 18 years.[57] On the other hand, the age of minority as laid down in the Juvenile Act (see Section II-1(2)(ii) above), Act on the Prohibition of Smoking by Minors, and Minor Drinking Prohibition Act were not reduced further and remained at 20 years.[58]

(ii) Regulations of Hairstyles by School Ordinances

As mentioned in the Introduction, the human rights of minors gained increasing attention because of school-based problems like bullying, corporal punishment, and school refusal in the 1980s.[59] School ordinances, mainly for junior high and high schools at this point were criticized as "excessive managerialism" that could infringe upon the human rights of students.[60] The Case charged for the violation of the School Ordinance for Buzz Cuts among Male Junior High School Students (Kumamoto District Court judgment, 1985.11.13) had great significance as it ushered in the abolition of school ordinances for buzz cuts.[61] In this case, a male student enrolled in a municipal junior high school in Kumamoto and claimed that the school ordinance stipulating buzz cuts for male students violated Articles 14 (equality under law), 21 (freedom of expression), and 31 (prohibition of the infringement of freedom, etc., without legal procedures) of the Constitution of Japan, and noted that the school principal, who was the legislator of the school ordinance, had deviated from the scope of the discretionary powers given to him. The student requested the principal and town to both invalidate the school ordinance and compensate him for damages. The Kumamoto District Court ruled that although the students faced discrimination by place of residence and gender, it amounted to a reasonable discrimination and did not violate Article 14 of the Constitution of Japan. It is extremely rare for junior

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[57] 第165回国会衆議院日本国憲法に関する調査特別委員会議録第8号　平成18年12月7日　pp.34-35 (Meeting No. 8 of the Special Committee for Investigations on the Constitution of Japan, House of Representatives, 165th Session of the National Diet of Japan, 2006.12.7, pp.34-35).

[58] The same also applies to Article 28 (purchase of winning horse voting ticket, etc.) of the Horse Racing Act (1948 Act No. 158); Article 9 (purchase of bicycle ticket, etc.) of the Bicycle Racing Act (1948 Act No. 209); and Article 792 (age of adoptive parents) of the Civil Code, among others.

[59] 赤坂　前掲注(1), pp.17, 22 (AKASAKA, *op.cit.*(1), pp.17, 22).

[60] 横田守弘「校則によるバイク制限」長谷部ほか編　前掲注(46), p.48 (YOKOTA Morihiro, "Motorcycle Restrictions by School Ordinance," HASEBE et al. eds., *op.cit.*(46), p.48).

[61] 江藤祥平「公立中学校における髪形の規制」同上, p.55 (ETO Shuhei, "Regulations on Hairstyles in Public Junior High Schools," *ibid.*, p.55). A judgment of the Supreme Court of Japan decided that provisions like a buzz cut in "knowledge of junior high school students" only showed knowledge (i.e., there is no legal norm), and its enactment was not subject to an appeal (proceedings against the exercise of the public authority of the administrative agency) (Supreme Court of Japan First Petty Bench judgment, 1996.2.22).

high school students to treat hairstyles as expressions of their ideas, so it did not violate Article 21 either. As buzz cuts were not compulsory, it did not violate Article 31 of the Constitution of Japan. The court noted that the content of the school ordinance was not unreasonable given that buzz cuts were already widely in use in the district area, that there were no adverse dispositions when the ordinance was not obeyed, and that the principal who established the school ordinance did not deviate from the discretionary power given to him. Therefore, the court rejected the students' claims. The students' side did not appeal and the judgment was finalized. However, this case made waves with respect to the issue surrounding school ordinances.

The predominant view has been that freedom in choosing one's hairstyle is an issue under Article 13 (right to self-determination) of the Constitution of Japan.[62] A scholar noted that freedom in choosing one's hairstyle is as important for the youth, who are in a formative stage in their lives, as it is for adults (or more important than it is for adults).[63] However, another indicated that it is difficult to see this right as being related to the crux of the right to self-determination under Article 13 of the Constitution of Japan, and indicated that it should be placed on the periphery instead.[64] Yet another scholar indicated that regulations on hairstyles cannot be considered as important as regulations on the right to self-determination.[65] However, with respect to buzz cuts, it has been indicated that "there is some room for concern as being related to the right to self-determination, given the forced uniformity whose intensity extends to physical aspects,"[66] and that "it is problematic because it has the significance of imposing uniformity beyond regulations on hairstyles."[67] In the Case charged for withdrawal of a student from school because of a permanent wave hairstyle at Shutoku High School (Supreme Court of Japan First Petty Bench judgment, 1996.7.18), where the prohibition of permanent wave hairstyles was disputed, the Court stated that the school ordinance did not unduly restrict freedoms pertaining to hairstyles given that it did not enforce a particular hairstyle. In recent years, there have also been debates on the prohibition of hairstyles called "undercuts" through school ordinances at Tokyo metropolitan high schools, and guidance on handling cases

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62 中富公一「公立中学校における髪型の規制」長谷部恭男ほか編『憲法判例百選Ⅰ　第 6 版』(別冊 Jurist　No.217) 有斐閣, 2013, p.49 (NAKATOMI Koichi, "Regulations on Hairstyles in Public Junior High Schools," HASEBE Yasuo et al. eds., *Top 100 Constitutional Precedents 1, Sixth Edition* (Separate Volume Jurist No. 217), Yuhikaku Publishing, 2013, p.49).

63 芦部信喜『憲法学Ⅱ　人権総論』有斐閣, 1994, p.404 (ASHIBE Nobuyoshi, *Constitutional Law II: General Human Rights*, Yuhikaku Publishing, 1994, p.404).

64 佐藤幸治『憲法　第 3 版』(現代法律学講座 5) 青林書院, 1995, p.413 (SATO Koji, *Japanese Constitution, Third Edition* (Contemporary Law Lecture 5), Seirin-Shoin, 1995, p.413).

65 高橋和之『立憲主義と日本国憲法　第 5 版』有斐閣, 2020, p.158 (TAKAHASHI Kazuyuki, *Constitutionalism and the Constitution of Japan, Fifth Edition*, Yuhikaku Publishing, 2020, p.158).

66 佐藤　前掲注(11), p.216 (SATO, *op.cit.*(11), p.216).

67 高橋　前掲注(65), p.158 (TAKAHASHI, *op.cit.*(65), p.158).

when a student's hair is naturally light or curly.[68]

(iii) Descriptions of Student Activist History in School Reports

In the Case charged for a school report from Kojimachi Junior High School (Supreme Court of Japan Second Petty Bench judgment, 1988.7.15), a former student filed a claim for damages against Chiyoda Ward and Tokyo Metropolitan Government based on the State Redress Act (Act No. 125 of 1947) after he was rejected by all the high schools he had applied to. The school report submitted by the Kojimachi Junior High School to each high school included descriptions of the student's activist history ("participation in rallies of ML – which was one of the branches of school activist movements," etc.). There was a need to say that the preparation and submission of a school report by the school principal caused "illegal" damage to the former student in order for compensation to be granted under the law, therefore the issue in this case was whether the actions of the principal constituted an illegal act in relation to Article 19 (freedom of thought and conscience) of the Constitution of Japan.[69] The Supreme Court of Japan stated that "it is clear that none of the descriptions presented the thoughts and beliefs themselves of the appellant [former student], and the appellant's thoughts and beliefs could not be understood by the external acts related to the above description, and moreover, it cannot be said that the appellant's thoughts and beliefs themselves were used as materials for the selection of enrollees to the high school." It thus rejected the claims of the former student.

This judgment was criticized by scholars on the ground that it may be impermissible for school reports to include facts that may allow for the thoughts and beliefs of an individual to be inferred directly (e.g., abovementioned "ML…"),[70] that educational considerations are given too much priority, and that there is insufficient consideration for the personal autonomy of minors.[71] There is also a perspective that though it may be difficult to sympathize with the behavior of former students in the present day, "if the indication that student activism was a childish expression of the conflict of youths who thought whether to be incorporated into society as is, in the period of high economic growth…applies to this case as well, then it cannot be said that it is unrelated to the present

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68 「東京都議会　会議録検索　令和２年予算特別委員会（第３号）」2020.3.12.（発言 200～216） ("Tokyo Metropolitan Assembly: Assembly Record Search: 2020 Budget Special Committee (Vol. 3)," 2020.3.12 (Comments 200–216)).

69 小島慎司「内申書の記載内容と生徒の思想・信条の自由―麹町中学内申書事件―」長谷部ほか編　前掲注(46), pp.76-77 (KOJIMA Shinji, "Freedom of Thought and Belief of Students and Contents of the School Report: Case Charged for a School Report from Kojimachi Junior High School," HASEBE et al. eds., *op.cit.*(46), pp.76-77).

70 芦部信喜, 高橋和之補訂『憲法　第 7 版』岩波書店, 2019, p.157 (ASHIBE Nobuyoshi, TAKAHASHI Kazuyuki eds., *Japanese Constitution, Seventh Edition*, Iwanami Shoten, 2019, p.157).

71 佐藤　前掲注(64), p.415 (SATO, *op.cit.*(64), p.415).

day."[72]

(iv) Regulations on Harmful Books, Etc.

In the Case charged for the violation of the Gifu Prefectural Ordinance for the Protection and Development of Youths (Supreme Court of Japan Third Petty Bench judgment, 1989.9.19), a business operator was charged with violating the abovementioned ordinance, which prohibited the storage of harmful books in vending machines, and insisted on the enforcement of his rights under Article 21, Paragraph 1 (freedom of expression, freedom to know), etc. of the Constitution of Japan. Several issues were discussed. However, this article focuses on the relationship with minors. The Supreme Court of Japan stated that the "prohibition of storage of harmful books in a vending machine does not violate Article 21, paragraph 1 of the Constitution of Japan in relation to youths," given that "it would be safe to say that it has become common social recognition that harmful books as specified by the Prefectural Ordinance have adverse effects on the values concerning the sexuality of youths, who are generally not sufficiently judicious, and lead to the encouragement of the tendency to permit sexually deviant acts and acts of atrocity, and are thus harmful to the sound development of youths." Judge ITO Masami stated in a concurring opinion that, given that "the degree of the guarantee [of the freedom to know] for youths must be said to be lower compared to that for adults," then "it seems to be safe to consider that in order to establish the constitutionality of the regulation of harmful books for the purpose of protecting youths, the fact that there is a reasonable probability that a harmful book will cause harms: such as the delinquency of youths, can be a sufficient basis," and "in consideration of common recognition in modern society, it is probably safe to say that the imposition of a restriction on youths' freedom to have contact with harmful books for the protection of youths fulfills the requirement of a reasonable probability mentioned above."

This judgment was considered problematic as it recognized a causal relationship between harmful books and the misconduct of the youth.[73] A scholar also questioned whether constraints on the freedom of expression, which relied solely on such common social recognition, can continue to be supported.[74] Another scholar noted that such regulations should probably be based on national law in the first place.[75] Recent examples

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[72] 小島　前掲注(69), p.77 (KOJIMA, *op.cit.*(69), p.77). The source of the "indication" in the quoted text was cited as "小熊英二『1968（上）（下）』［2009］(OGUMA Eiji, *1968 (Parts 1 and 2*), Shin-yo-sha, 2009)."

[73] 芦部, 高橋補訂　前掲注(70), p.209 (ASHIBE, TAKAHASHI eds., *op.cit.*(70), p.209).

[74] 松井茂記「「有害図書」指定と表現の自由―岐阜県青少年保護育成条例事件―」長谷部ほか編　前掲注(46), p.113 (MATSUI Shigenori, "Designation of 'Harmful Books' and Freedom of Expression: Case Charged for the Violation of the Gifu Prefectural Ordinance for the Protection and Development of Youths," HASEBE et al. eds., *op.cit.*(46), p.113).

[75] *ibid.*, p.113. Judge ITO Masami stated in a concurring opinion that the "regulation of harmful

include the regulation of books that induce suicide or crimes and cases where some sexual anime and cartoons are subject to specific regulations ["Tokyo Metropolitan Ordinance Relating to the Sound Development of Youths" (Ordinance No. 181 of 1964) Article 7, Article 8, etc.]. Harmful information on the Internet has also been regulated[76] (see Section II-2(1)(i) above).

(v) Prohibition of Obscene Acts

In the Case charged for violation of the Fukuoka Prefectural Ordinance for the Protection and Development of Youths (Supreme Court of Japan Grand Bench judgment, 1985.10.23), an adult male was charged with violating the abovementioned ordinance, which stated that "it is prohibited for any person to commit an obscene or indecent act against a youth [aged under 18 years[77]]." He claimed that, given that "the provisions... are intended to regulate all sexual acts committed with a youth... of not less than the marriageable age [18 years for men, 16 years for women[78]] based on his/her own free will, including such acts that are committed based on a sincere agreement on the promise of marriage, without exception," the scope of the punishment was unreasonably broad and that of the term "obscene act" was unclear (violation of Article 31, etc., of the Constitution of Japan[79]).The Supreme Court of Japan stated that "an 'obscene act' as referred to in... the

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books is not common to the whole country but is rather largely left to a political determination that is made in consideration of many circumstances, such as the situation of the local society, residents' awareness, and the national impact of publication activities in the community. Therefore, it is considered that a broader regional difference is permitted for a regulation of harmful books compared to the provisions prohibiting obscene acts" (see Section II-2(2)(v) described later for provisions on the prohibition of obscene acts).

76 「青少年の保護育成に関する都道府県条例規制事項一覧」2020.1.1. 内閣府ウェブサイト ("List of Prefectural Ordinance Regulations Regarding the Protection and Development of Youths," 2020.1.1, Cabinet Office website).

77 In this Ordinance, the term "youth" was defined as "persons from the beginning of elementary school to the age of 18 years, except for those who have the same abilities as adults through other laws and regulations" (Article 3, Paragraph 1).

78 Men must be aged 18 years or older and women 16 years or older in order to marry (Civil Code Article 731). With the Act for Partial Revision of the Civil Code (Act No. 59 of 2018), the marriageable age will be 18 years for men and women from 2022.4.1 onward.

79 Article 31 of the Constitution of Japan ("No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law") is understood as referring to the statutory procedure and its appropriateness, as well as the statutory provisions of substantive nature corresponding to that of procedure (the principle of legality), and the appropriateness of substantive provisions [芦部, 高橋補訂　前掲注(70), pp.252-253 (ASHIBE, TAKAHASHI eds., *op.cit.*(70), pp.252-253)]; therefore, if the punitive regulations are unclear, it will not fulfill the role of advance notice of punishment and is said to be contrary to the principle of legality of that Article [村西良太「刑罰法規の不明確性と広範性―福岡県青少年保護育成条例事件―」長谷部恭男ほか編『憲法判例百選Ⅱ　第 7 版』（別冊 Jurist No.246）有斐閣, 2019, pp.240-241 (MURANISHI Ryota, "Uncertainty and Broad Scope of Punitive Laws: Case Charged for Violation of the Fukuoka Prefectural Ordinance for the Protection and Development of Youths," HASEBE Yasuo et al. eds., *Top 100 Constitutional Precedents 2, Seventh Edition* (Separate Volume Jurist No. 246), Yuhikaku Publishing, 2019,

Ordinance... refers to sexual intercourse or an act similar thereto in which the person in question is only recognized as treating a youth merely as an object for satisfying his/her own sexual desire, in addition to sextual intercourse or an act similar thereto that is committed by unjust means that takes advantage of the mental and physical immaturity of a youth" and provided a limited interpretation of the term "obscene act" (determined that the actions of the accused corresponded to this definition), stating that the provisions of this Ordinance did not violate Article 31 of the Constitution of Japan.[80]

This judgment did not examine whether the freedom of sexual activity is constitutionally guaranteed.[81] There is no certainty that the constitutional right (freedom of sexual activity) was considered in the interpretation of "obscene acts" in this judgment.[82] Although it is unclear whether the minor's freedom of sexual activity was recognized in this judgment, even if such a freedom was recognized, the Supreme Court of Japan may have gradually allowed the constraint on the freedom (i.e., there is a high possibility that examinations that respect the legislative content and allow the constraint will be conducted).[83]

Provisions addressing sexual crimes against persons aged under 18 years, such as those under the Penal Code and Anti-Prostitution Act (Act No. 118 of 1956), Article 34(1)(vi) of the Child Welfare Act (crime of causing a child to commit an obscene act); Article 4 of the Act on the Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, and the Protection of Children (crime of child prostitution; see Section II-1(1)(ii) above); and the Prefectural Ordinances for the Protection and Development of Youth were all enacted in response to social demands. However, some crimes were duplicated, or created difficulties in interpretation, as the social environment changed. Therefore, there is a need to reorganize provisions governing

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pp.240-241)].

[80] The minority opinion in this case contended that sexual activity is originally intended to satisfy sexual desire, so even if the requirement of "treating a youth merely as an object for satisfying his/her own sexual desire" is set, it is difficult to prove it, therefore, the above interpretation may not play a role in clarifying what an "obscene act" is, and it may be difficult to say that this is an interpretation that the general public can easily arrive at from the original legal text.

[81] Though there is a view that sexual freedom (freedom of sexual activity) seems to be understood as being included within the right to pursue happiness under Article 13 of the Constitution of Japan, or as a right to privacy [法曹会編『最高裁判所判例解説　刑事篇　昭和 60 年度』1989, pp.231, 257 (Hosokai ed., *Supreme Court of Japan Case Law Commentary: Criminal Edition, 1985*, 1989, pp.231, 257)], there is also an interpretation that it could be included within the freedom of the formation and maintenance of families under Article 24 of the Constitution of Japan [松井茂記『日本国憲法　第 3 版』有斐閣, 2007, pp.549-550 (MATSUI Shigenori, *the Constitution of Japan, Third Edition*, Yuhikaku Publishing, 2007, pp.549-550)].

[82] 村西　前掲注(79), p.241 (MURANISHI, *op.cit.*(79), p.241).

[83] 松井　前掲注(81), p.357 (MATSUI, *op.cit.*(81), p.357). Freedom of sexual activity is not an "indispensable right in the process of political participation" or a "right that cannot be entrusted to the political process" (e.g., freedom of expression), so the court should conduct a gradual examination that respects the legislative content, which is the "decision of the political process" (*ibid.*, pp.547-550).

sexual crimes.[84]

Conclusion

Since the 1980s, there has been increased attention to issues surrounding the youth from the perspective of Japanese Constitutional Law because of school-based problems and the Convention on the Rights of the Child. Against the backdrop of problems like child abuse, prostitution and pornography, and poverty, harmful information on the Internet, and Internet/computer game addiction in recent years in addition to the abovementioned issues, there have been several debates on the youth.

The commentary on the Case charged for a school report from Kojimachi Junior High School (Section II-2(2)(iii)), a judgment in the 1980s that has been included among the *Top 100 Constitutional Precedents*, referred to the "conflict of youths in the period of high economic growth." According to the book *1968* by Keio University Professor OGUMA Eiji, which the commentary cited as a reference, the rebellion of the youth at the time may have been the action of a generation that collectively faced "contemporary misfortune" (unlike the "modern misfortunes" of war, hunger, poverty, etc., this refers to anxiety around identity, diluted reality, loss of realism, etc.) for the first time in Japan, where they tried to express and break through their anxiety and feelings of obstruction that they could not verbalize, by appropriating the form of a political movement.[85] This book compared "modern" and "contemporary" misfortune and focused on the latter. However, in the present day, where child poverty is pointed out, the problems of the former (albeit in a different form as before) appear to be worsening. These tendencies may continue based on future economic and social circumstances, and in combination with the problems of "contemporary misfortune," it is becoming increasingly important to address issues concerning the youth.

Given the wide range of policy issues concerning the youth, there is a need to organize them within the legal system, including the Japanese Constitution. Examining the issues surrounding the youth from the perspective of the Japanese Constitution can deepen their understanding and improve the situation.

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[84] 園田寿「児童に対する性犯罪規定」（令和元年度大阪府青少年健全育成審議会第 2 回特別部会　資料 1）2019.6.20, p.25. 大阪府ウェブサイト (SONODA Hisashi, "Regulations on Sex Crimes Against Children," (FY2019 2nd Special Subcommittee of the Osaka Prefectural Council for the Healthy Development of Youths, Material 1), 2019.6.20, p.25, Osaka Prefectural Government website)

[85] 小熊英二『1968　下　叛乱の終焉とその遺産』新曜社, 2009, pp.980-981 (OGUMA Eiji, *1968 (Part 2): End of the Rebellion and Its Heritage*, Shin-yo-sha, 2009, pp.980-981). See *op.cit.*(72).

Appendix: Constitutional Provisions of Other Countries

There are examples in the constitutions of other countries where the rights and protections of minors are comprehensively listed. Examples from the Organization for Economic Co-operation and Development (OECD) countries are presented here.

1 *List of Provisions*

Table 3 presents the main provisions governing minors under the constitutions of OECD states. While provisions that stipulate the rights and protections of minors comprehensively are presented, individual provisions (e.g., right to education, prohibition of the exploitation of children) are not. Provisions such as the allocation of federal and/or state-level authority are not. Countries that have no provisions according to the abovementioned criteria are not presented here.

2 *Comparison*

The provisions of each country can be roughly classified into those that stipulate the (1) rights of children, and the responsibilities of (2) the state, and (3) citizens. Examples of (1) include provisions in the Norwegian Constitution, such as the one that stipulates that "children have the right to respect for their human dignity" (Article 104, added by an amendment in 2014); and the Belgian Constitution, which stipulates that "each child has the right to respect for his or her moral, physical, mental, and sexual integrity" (Article 22bis, Paragraph 1; added by an amendment in 2000). Examples of (2) include those from the Irish Constitution, which stipulates that "The State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights" (Article 42A, Paragraph 1; added by an amendment in 2015; this provision also falls under category (1) given the wording of the rights of children); and the Spanish Constitution, which stipulates that "the public powers…shall ensure the full protection of children…" (Article 39, Paragraph 2; established in 1978). Examples of (3) include provisions from the Italian Constitution, which stipulated that "it is the duty and right of parents to support, raise, and educate their children…" (Article 30, Paragraph 1; established in 1947); and the German Constitution, which stipulated that "the care and upbringing of children is the natural right of parents and a duty primarily incumbent upon them" (Article 6, Paragraph 2; established in 1949).

Table 3 **Comprehensive provisions concerning minors in the constitutions of OECD states**

Country(Note 1)	Clause (Note 2)	Main provisions(Note 3)
Iceland	Article 76, Paragraph 3	Legal guarantee of protection and care needed for the well-being of children ((2))
Ireland	Article 42A	State recognition and protection of the rights of children, parental duty ((1), (2), (3))
Italy	Articles 30 and 31	Parents' right and duty toward children, state protection ((2), (3))
Estonia	Article 27	Parents' right and responsibility around raising children, statutory protection for parents and children ((2), (3))
Austria	Constitutional law	Rights of children to receive protection and care needed for their well-being ((1))
South Korea	Article 34, Paragraph 4	State duty to implement policies that improve the welfare of the youth ((2))
Greece	Article 21	State protection of children, special state measures for the protection of the youth ((2))
Columbia	Articles 42 and 44	Basic rights of children relating to life, etc., family / society / state duty ((1), (2), (3))
Switzerland	Articles 11 and 67	Rights of children and youth to receive support for their growth, consideration of special needs for development and protection ((1), (2))
Sweden	Chapter 1, Article 2, Paragraph 5	Duty of public institutions to make an effort to protect the rights of children ((1), (2))
Spain	Article 39	Protection of children by public powers, parental duty ((2), (3))
Slovakia	Article 41	Rights of children to receive parental care and development, state support to parents ((1), (2))
Slovenia	Articles 53, 54, and 56	State protection, parents' right and duty to support children, the rights of children ((1), (2), (3))
Czech Republic	Article 32	Special protection for children and youths, rights of children to seek parental care ((1), (2))
Germany	Article 6	Parental duty with respect to the custody of their children, monitoring of its implementation by national community ((2), (3))
Turkey	Articles 41, 58, and 61	Rights of children to receive protection and care and to maintain relationships with parents, state measures ((1), (2))
Norway	Article 104	Rights of children to respect for their human dignity and to protection of their personal integrity, state duty ((1), (2))
Hungary	Articles XV and XVI	State protection measures, rights of children to receive protection and care, parental duty ((1), (2), (3))
Finland	Article 6, Paragraph 3	Rights of children to be treated equally as individuals ((1))
Belgium	Article 22bis	Rights of children to respect for their physical, mental, etc., integrity, legal guarantees ((1), (2))
Poland	Article 72	State protection of the rights of children, duty to listen to the opinions of children ((1), (2), (3))
Portugal	Articles 36, 69, and 70	Parental duty, rights of children to receive social and state protection, protection of youths ((1), (2), (3))
Mexico	Article 4, Paragraphs 9–11	State guarantees, rights of children to meet their needs for food, education, etc., duty of parents, etc. ((1), (2), (3))
Latvia	Article 110	State protection and support of the rights of children ((1), (2))
Lithuania	Articles 38 and 39	Parental right and duty to raise children, state protection of child-rearing families ((2), (3))

(Note 1) Countries are listed in the Japanese syllabary order. Countries for which no provisions are found according to the criteria in Note 2 are not presented here.

(Note 2) Provisions that comprehensively stipulate the rights and protections of minors are presented. Individual provisions (e.g., right to education, prohibition of the exploitation of children) are not presented. Provisions like the allocation of federal and/or state-level authority are not presented. The provisions are found under the Federal Constitutional Act on the Rights of Children for Austria, Instrument of Government in Sweden, and the Charter of Fundamental Rights and Freedoms in the Czech Republic (these instruments constitute the constitutions of each country).

(Note 3) (1), (2), and (3) refer to those that stipulate the rights of children, and the responsibilities of the state and citizens, respectively.

(Sources) Created by the author based on the constitution of each country; 井田敦彦「OECD 諸国の憲法―憲法典の比較による概観―」『調査と情報―ISSUE BRIEF－』1087 号, 2020.2.25 (IDA Atsuhiko, "Constitutions of OECD Countries: Overview by Comparisons of Constitutions," *Research and Information: ISSUE BRIEF*, 1087, 2020.2.25), etc. Provisions that were confirmed on the last date on which the websites of each country's parliament etc., were accessed (2020.12.7) were used.

Many countries, including those mentioned above, fall under more than one of the categories. Category (1) seems to have been set in many countries with relatively recent (i.e., from the 1990s onwards) establishment or amendment of their constitutions. Many countries have begun to establish constitutional provisions. However, they are in the form of programmatic provisions (e.g., direct claims cannot be exercised against the state) and serve as goals of society at most.[86]

In Germany, the Joint Bundestag and Bundesrat Constitutional Commission established after the German reunification in 1991 proposed that the rights of children should be stipulated under the Basic Law (Basic Law of the Federal Republic of Germany; equivalent to the constitution). However, this was not adopted because children were already guaranteed their basic rights under the current Basic Law and as a result, such an amendment would have been meaningless, and distinguishing a special group of "children" in the Basic Law may be misleading as though general basic rights do not apply to children; and because parental educational rights may be hollowed out by the stipulation of supervisory responsibilities by the state.[87] In Germany, similar proposals have been repeatedly made against the backdrop of child abuse incidents etc., but none of them have been realized. There has been some progress in the provision of individual laws governing sexual crimes, corporal punishment, etc., against children. The establishment of laws regarding the rights of children under the current Basic Law can become a factor that makes the amendment of the Basic Law tougher.[88]

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[86] 山岡規雄「諸外国の憲法における青少年保護規定」国立国会図書館調査及び立法考査局前掲注(30), p.54 (YAMAOKA Norio, "Provisions on Protection of Juveniles in Constitutions of the World," Research and Legislative Reference Bureau, National Diet Library, *op.cit.*(30), p.54).

[87] 結城忠「子どもの権利の憲法条項化の試み（ドイツ）（学校における生徒の法的地位　27）」『教職研修』27 巻 11 号, 1999.7, pp.147-149 (YUKI Makoto, "Attempts for Constitutional Provisions for the Rights of the Child (Germany) (Legal Status of Students in Schools 27)," *Training in Teaching*, 27(11), 1999.7, pp.147-149); 荒川麻里「ドイツにおける「子どもの権利憲法条項化案」棄却の論理」『教育制度研究紀要』7 号, 2012.2, pp.96-98 (ARAKAWA Mari, "Logic of Dismissing the 'Constitutional Provisions of the Right of the Child'' in Germany," *Research Bulletin of Educational Organization*, 7, 2012.2, pp.96-98).

[88] 荒川　同上, p.104 (ARAKAWA, *ibid.*, p.104). Recently, in 2019, both Alliance 90/The Greens and The Left (Die Linke) have each submitted as main sponsors a draft amendment to the Basic Law that stipulates the rights of children (Entwurf eines Gesetzes zur Änderung des Grundgesetzes (Ergänzung des Artikels 6 zur Stärkung der Kinderrechte) (Deutscher Bundestag, *Drucksache* 19/10552). Bundestag website; Entwurf eines Gesetzes zur Änderung des Grundgesetzes (Verankerung von Kinderrechten) (Deutscher Bundestag, *Drucksache* 19/10622). *idem.*). Stipulating (ausdrücklich verankern) the rights of children in the Basic Law has also been mentioned in the coalition agreement of the current administration (CDU, CSU und SPD, "Ein

In Japan, the Democratic Party of Japan, in its "Constitutional Recommendations," in 2005, recommended the stipulation of "the rights of children" and the clarification of the "right to education" and "duties or responsibilities of the national and local governments, guardians, regions, etc., toward education."[89] A look at recent proposals for constitutional reform, including those pertaining to education shows that in 2016, the Nippon Ishin no Kai (Initiatives from Osaka at the time) presented "free education" as one of the items in its "Constitutional Amendment Draft."[90] In 2018, the Liberal Democratic Party presented "educational enhancement" as one of the items in its "Article Image (original plan draft)" of Constitutional Reform.[91] The Constitutional Democratic Party of Japan, in its "Thoughts on the Constitution," stated that it was difficult to find significance in discussing "gradual free higher education" as a subject of constitutional reforms, because according to the International Bill of Human Rights, "gradual free higher education" was already a legal obligation for the government to discharge in compliance with national law.[92] In 2019, the Japanese Communist Party, in its electoral promise, stated that it would guarantee "the rights of children" by utilizing the constitution (not constitutional amendments).[93] In 2020, the Democratic Party for the People stated in its "Arrangement of Issues for Constitutional Reform," that it would continue to investigate whether or not to stipulate "the rights of children."[94]

IDA Atsuhiko, *Constitution of Japan and the Youth: The Human Rights of Minors* (Research Materials), 2022e-2, Tokyo: Research and Legislative Reference Bureau, National Diet Library, 2022.

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neuer Aufbruch für Europa, Eine neue Dynamik für Deutschland, Ein neuer Zusammenhalt für unser Land: Koalitionsvertrag zwischen CDU, CSU und SPD, 19. Legislaturperiode," 2018.3.12, p.21. Bundesregierung website).

89 民主党憲法調査会「民主党「憲法提言」」2005.10.31, p.8 (Constitution Research Commission, Democratic Party of Japan, "Democratic Party of Japan 'Constitutional Recommendations'," 2005.10.31, p.8).

90 「日本維新の会　憲法改正原案」2016.3.24 ("Nippon Ishin no Kai: Constitutional Amendment Draft," 2016.3.24).

91 自由民主党憲法改正推進本部「憲法改正に関する議論の状況について」2018.3.26, pp.5-6 (Headquarters for the Promotion of Revision of the Constitution, Liberal Democratic Party, "Regarding the Status of Discussions on Constitutional Reform," 2018.3.26, pp.5-6).

92 立憲民主党「憲法に関する考え方―立憲的憲法論議―」2018.7.19 (Constitutional Democratic Party of Japan, "Thoughts on the Constitution: Constitutional Debates on the Constitution," 2018.7.19).

93 日本共産党「2019 参議院選挙公約　希望と安心の日本を」pp.11-13 (Japanese Communist Party, "2019 House of Councilors Election Promises: For a Hopeful and Safe Japan," pp.11-13).

94 国民民主党憲法調査会「憲法改正に向けた論点整理　新時代の人権保障と統治機構の再構築を通じて憲法の規範力を高めるために」2020.12.4, p.15 (Constitutional Research Commission, Democratic Party for the People, "Arrangement of Issues for Constitutional Reform: In Order to Enhance Constitutional Normative Power Through the Restructuring of Human Rights Protection and Governance for a New Era," 2020.12.4, p.15).