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The Lay Judge System:
Its Role and Effects on Japanese Society

Fathima Azmiah MARIKKAR

Introduction

In Japan, the modern judicial system was established in the early Meiji period, and except for a brief period in the Showa Era, public participation was not allowed in criminal trial proceedings. In other words, the Japanese legal system was entirely in the hands of legal experts such as judges, public prosecutors and attorneys.

The new system comes at a time when other Asian countries are creating or reinvigorating citizen participation in legal proceedings. China, reintroduced a mixed jury system in 2004 and South Korea launched a five year pilot jury program in 2007. Although the "saibanin" (lay judge) system is unique in form and scope, it is the third time that Japanese citizens have played roles in court trial decisions. The first jury system was between 1928 and 1943, and then a lesser known instance in Okinawa under American occupation after the war. The first attempt to include citizens in the judicial process was modeled on the American jury system. It was different from the present lay judge system as the prewar system consisted of 12 jurors. The government hoped that giving people a voice in trial decisions would increase public support for the judicial process.

The introduction of public participation in criminal trials began to take shape nearly a decade ago. The Judicial Reform Council set up by the government in 1999, discussed all aspects of the legal system with the aim of improving its quality while making it generally more accessible to the public. In its final report in 2001, the council suggested that while improvements to the education and a number of legal professionals should be made, citizens who are subject to the law should also play an active role to inject their views and common sense into the criminal trial system, which has been only the realm of legal professionals. This has been embodied in Article 1 of the Act on the Participation of Citizens in Certain Criminal Proceedings which provides that "this Act establishes the criminal trial system in which citizen judges selected from the general public participate in criminal trials with professional judges, in view of the fact that such participation will contribute to the furtherance of the public’s understanding of and confidence in the justice system." As such pretrial meetings will be held for all cases subject to the lay judge system.

The lay judge system was proposed by a government panel for reform of the judiciary on June 12, 2001 and the Diet enacted the Lay Judges Law on March 21, 2004. Since then,
the legal system has been in full gear to lay the groundwork for the transformation. The lay judge system which started in May 2009 is an important transition in Japan's judicial system in which citizens begin serving as de facto jurors in district court trials involving serious crimes. Citizens play an active role in dispensing justice joining some 80 countries that in one form or other have public participation in the judicial process.

This paper will attempt to discuss the lay judge system, its role and effects on the legal system of Japan. Arguments for and against the system based on the opinions expressed by citizens who have already served as lay judges will also be highlighted.

The Lay Judge System

To reform Japan's judicial system for criminal trials, the Lay Judge Law was enacted in May 2004 for heinous crimes, such as murder, robbery and sex crimes including rape, resulting in death or injury, rape and robbery, indecent assault resulting in death or injury and gang rape resulting in death or injury are expected to account for about 20 percent of trials conducted under the lay judge system. The new system aims to make criminal trials, long dominated by the viewpoints of legal professionals more understandable to the public and to reflect common sentiments. About 3,000 cases annually are expected to be tried under the lay judge system in which six citizens chosen randomly from the list of eligible voters will together with three professional judges will hear initial trials and try to reach a verdict based on a conditional majority, which means at least one of the three professional judges must agree with the majority verdict. This group works together to determine the facts and participate in sentencing if the accused is found guilty.

Under the lay judge system, trial sessions are held on consecutive days. It is expected that one of every 4,000 citizens will serve as a lay judge every year. A Supreme Court poll whose results were announced on April 1, 2008 shows that 60 percent of respondents accepted the new system, these include those who do not want to serve as lay judges, although they said they would do so as their duty. Under the new system, professional judges should try together with lay judges to create an environment that promotes discussion in trials. Professional judges are accustomed to following a standardized method when assessing guilt and criminal responsibility. Under this system, a level of punishment is roughly decided on first by considering the maliciousness of the criminal act for which someone has been found guilty, then the degree of punishment is adjusted by taking into account other factors such as the guilty party's degree of remorse. With about 70 percent of such trials set to be over within three days, legal professionals will be expected to be more prepared for these trials.

After the Lay Judges Law was passed by the Diet, a poll was conducted by the Cabinet Office in 2007 which revealed that the public did not appear to be ready to serve as lay judges. The poll showed that 20.8 percent of the respondents were either willing to or would not mind participating. Another 44.5 percent said they did not want to participate but they feel they have to because it is an obligation, and 33.6 percent said they did not want to take part. A woman who runs an aromatherapy shop in Tokyo said that through the movies she was aware that the public takes part as jurors in the U.S and other countries, but she finds it hard to imagine this happening in Japan. To think that her opinion would determine someone's fate is a grave thing even though that person may have done something wrong. She further said, these things had been decided by people who studied the law. I wonder if people who have never studied can make such decisions.
In a Yomiuri Shimbun survey conducted on April 25 and 26, 2009 among 3000 eligible voters randomly selected from 250 locations nationwide, revealed that 60.3 percent favored the lay judge system. The survey was carried out in a face to face interview format. Regarding rulings handed down in past criminal trials, 34 percent said they thought that in many cases judges' handed down appropriate sentences to defendants, 50 percent thought judges were too soft and 4 percent said they were too strict. However, the rate of those who wanted to serve as lay judges in a trial stood at 18 percent down two points from the previous survey, while 79 percent said they did not want to participate.  

The lay judge system in Japan is different from the system in the United States, where in the U.S jury system 12 randomly chosen citizens decide what the facts of a crime are based on the evidence, but if they find the accused guilty, it is up to a professional judge to mete out the sentence. Citizens participate in criminal trial process in one form or other in some 80 countries including many European nations where lay and professional judges sit together on the bench and some American and British style systems in which verdicts are solely in the hands of jurors, as is sentencing in some cases.

The Japanese government has hailed the realization of public participation in trials, the first time in 66 years since a jury system was suspended before the end of World War II. Thus, this system will make a dramatic change in the nation's criminal trial system, with ordinary citizens' being reflected in judgment and sentencing. Then Justice Minister Eisuke Mori said, that the lay judge system will bring a “major change to trials that has been in the hands of the authorities. I believe more than a few people are worried about serving as lay judges. But what is needed (in trial) is the common sense that members of the public develop in everyday life.” He further said that he understands the reluctance of people, particularly about handing down a death penalty, but he expected an increase public debate over capital punishment in the wake of the system’s introduction. Seeking “faster, friendlier and a more reliable” administration of justice, the lay judge system which then Prime Minister Taro Aso calls the “pillar of the judicial system reform” focuses on courtroom exchanges, rather than the traditional lengthy out of court perusal of investigative records.”

According to a Yomiuri Shimbun survey of the nation’s district court public prosecutors offices, 145 cases including four in which suspects were indicted on Thursday, May 21, 2009 were thought likely to be examined under the lay judge system. Of the 14 cases listed in the survey, 52 were for alleged murder or attempted murder. They included crimes subject to capital punishment such as a case in which a 26 year old man who was being held for psychiatric analysis, is alleged to have killed two women in Kagoshima Prefecture. About half of the cases were domestic murders or attempted murders, such as a case in Miyagi Prefecture in which a mother is alleged to have been killed by her eldest son after she scolded him. A case in Osaka Prefecture in which a mother is alleged to have strangled her young child. The recent case involving the murder of a Chuo University professor is also likely to be subject to the lay judge system. Of the 145 cases, 47 were robberies resulting in injury. In many cases, robbers injured others while trying to flee. In one case, a man who had been caught shoplifting CDs in a rental store in Kanagawa Prefecture had beaten the guard. Six rape cases and four sexual assault cases appear to be examined under the lay judge system. The 145 cases also include ones in which foreigners are defendants, such as a murder in Tochigi Prefecture in which a Chinese was arrested, and a robbery resulting in injury in Shiga Prefecture in which a Brazilian and Colombian were arrested.
The Initial Five Cases decided by Lay Judges

The first lay judge trial under Japan’s new criminal trial system held in Tokyo was about a 72 year old man of Adachi Ward, Tokyo who was taken into custody on May 1, 2009 following the stabbing to death his neighbor, a woman of South Korean nationality, on a street near his home. Officers of the Metropolitan Police Department’s Nishiarai Police Station arrested the man on suspicion of murder after he admitted killing the woman in connection with a dispute over her gaining access to a plot of land he owned. This was the first lay judge case held from August 3 to 6, 2009 at the Tokyo District Court, the team of judges convicted the man of murdering his female neighbor and handed down a 15 year prison term. This case which was tried under the new system, and one of the focal points of the trial was whether the suspect had intended to kill the woman. The court dismissed the defense’s claim that the victim had instigated the feud. His lawyers sought leniency claiming the incident occurred accidentally after a quarrel between the defendant and the victim while prosecutors demanded a 16 year prison sentence. The panel of judges rejected the defendant’s argument that the victim had engaged in provocative behavior that led him to stab her to death giving him just a year less than the prosecutors had sought. The 72 year old man convicted in the nation’s first lay judge trial has appealed the ruling and only professional judges would hear the case at the appeal court.

The second trial involving citizen judges was tried at the Saitama District Court from August 10 to 12, 2009. In this case, a demolition worker attempted to kill a 35 year old unemployed male acquaintance in May 2009 in Saitama Prefecture by stabbing him with a knife. In this case, the victim appeared as a witness and there was room for leniency as the murder attempt had failed and the defendant turned himself in. During the three day trial, the prosecutors demanded a six year prison term for the defendant, while his defense sought a suspended term since he had turned himself in, and then pleaded guilty and expressed regret for his act before the bench. But presiding judge Makoto Tamura said that “......... it was an extremely dangerous crime as the defendant stabbed the victim on the left side of his chest with a kitchen knife,” in handing down the ruling of a 4 ½ year prison sentence. In this case, the panel comprising of six citizen judges and three professional judges took into account several factors that favored the defendant such as the victim had a money related dispute between himself and the defendant and he voluntarily gave himself up to the police.

The third case was tried at the Aomori District Court where the defendant was found guilty of breaking into the apartment of a woman in her 20s, raping her and seizing 14,000 yen in cash in July 2006 when he was a minor. The findings revealed that the defendant trespassed into the apartment of another woman in the same city and stole 2,000 yen in cash and a video game console in June 2008. He again went to the apartment, raped the woman and stole 48,500 yen in cash. Although theft and trespassing cases are out of the scope of lay judge trials, the Aomori District Court decided to try this case collectively so the acts were linked. The defendant pleaded guilty at the first hearing. The prosecution sought 15 years in prison for the defendant, but the defense called for five years saying the defendant had shown remorse. The panel of three professional judges and six citizen judges sentenced the defendant to 15 years in prison.

The next being the fourth trial under the lay judge system was held in western Japan in the Kobe District Court on Monday, September 8, 2009, where the case involved a 40 year old man suspected of trying to murder his 74 year old father by striking him with a
glass ashtray while he was sleeping. The father took days to recover from his injuries. The defendant told investigators during questioning that he had difficulty making a living and intended to kill his father and then commit suicide. At the Kobe District Court, prosecutors demanded a five year prison term. This was the case in which the first suspended sentence was given under the lay judge system. Presiding Judge Ryuichi Higashio sentenced the defendant to three years in prison suspended for four years on probation as the defendant’s father and his 18 year old and 14 year old children don’t want him to punish. It is better to avoid the suffering they may endure if he’s imprisoned” Regarding probation sentence, the judge said: ....... it made sense to give him a chance to rehabilitate in society in cooperation with his father and under the supervision of probation (officers).

The fifth case being the first lay judge trial with interpreters began on Tuesday, September 8, 2009 at the Saitama District Court in Urawa Ward. As attention is focused on how the court proceedings concerns over how the interpreting may influence the lay judges’ impression of the defendant, the trial has been extended for four days, which is longer than usual for a lay judge trial. The defendant a 20 year old Filipino male indicted on charges of robbery resulting in body harm. The man was 19 years old at the time he committed the crime, conspired with two other minors to assault and rob a 26 year old man who happened to be passing by on a street in Minami Ward, Saitama in December 2008. The victim was seriously injured and cash amounting 30,000 yen was stolen from him. Two Tagalog interpreters were assigned to the trial. In this case, the court explained the Juvenile Law to the lay judges as the defendant was a minor under Japanese law when he committed the crime. In this first lay judge trial involving interpreters, though prosecutors demanded six years imprisonment, the court sentenced him on September 11, 2009 to five years in prison for two counts of robbery resulting in injury.

The Role and Effect of the Lay Judge System

The launch of the lay judge system for criminal trials is being observed with great interest not only in Japan but overseas as well, where public participation in court cases is well established. Cornell Law School professor Valerie Hans says that “It’s a very important moment, not just for Japan but for many people who look at lay participation and think about it as a valuable part of society.” Getting more people to take part in the selection process is important because jurors should reflect values from all communities, Hans said that Americans tend to overestimate how time consuming and difficult it is to serve on a jury. She further added that, “What’s remarkable about Japan’s experiment is that you can observe the introduction of the new system and see whether or not it changes public views and opinion about the legal system generally, and indeed whether it makes Japanese citizens feel more connected to what is going on in their government.”

A Tokyo-based citizens group, comprising lawyers, university students and others established Saibanin Net (Lay Judge Net) in April 2009 to observe and evaluate the new lay judge trials. “It created a ten page questionnaire for use by its monitors. Users fill in the form, ranking on the four-point scale such elements as how easy it was to understand the prosecutors and defense attorneys’ arguments and how the judges moved the proceedings along.” College students supporting Saibanin Net’s activities attended two lay judge trials held in August as monitors, using the groups questionnaire. Ryutaro Tazoe, a junior at Chuo University who observed a murder trial at the Tokyo District Court commented that “it was really hard to concentrate on the proceedings for so many hours.” He further said that “the lay judges must get even more tired, they should make sure they get enough break.
time.”16 Yuki Hashiba, a sophomore at Tokyo University of Foreign Studies who attended an attempted murder trial at the Saitama District Court had words of praise for the presiding judge. The presiding judge provided additional explanation in response to lay judges’ questions, thereby reducing the burden on them.

After the lay judge system was introduced, Yomiuri Shimbun conducted a survey among twenty candidates — 12 men and 8 women from 16 prefectures aged from 20 to 70. The number of people who favored and opposed the lay judge system were roughly equal, and most of those in favor consider it most meaningful point to be the possibility of seeing their common sense reflected in criminal trial proceedings. Most of those harboring negative feelings about the system noted the potentiality for emotional strains. For example, a woman in her 40s in Aichi Prefecture said she feels uneasy about judging other people as she is not a legal expert. Such candidates appeared to feel extreme pressure about being called on to exercise judicial responsibility. While a woman in her 30s in Nagasaki Prefecture expressed anxiety about directly facing the accused unless a device such as a one way mirror was installed. A man in his 60s showed enthusiasm about his participating saying he is interested in the legal process and wants to see how it works, though he opposes the system in general.17

Freelance writer Toru Kitao suggests lay judges hold a public discussion with judges after the ruling in order to share feelings on their experience to improve the system, saying, “Participants in a mock trial strongly stick to their opinions, though it is said Japanese tend to be affected by others’ opinions. While, novelist Kaoru Kitamura said she wondered if she would be able to understand all the facts in a trial of three to five day duration, if she was chosen as a lay judge. Kitamura said she believed citizen participation in trials are still unsettled, including lack of transparency regarding questioning of the accused. Remarking that the impact of the lay judge system will remain unclear until a study is conducted years from now, Kitamura said “I know it is difficult, but I’d do my best not to be overwhelmed by emotion and to stay rational if I were chosen to take such position to judge people’s lives.”18

Legal experts are concerned that it may be difficult for lay judges to discuss cases compassionately if for example, prosecutors appeal to lay judges sentiments by emphasizing the feelings of a victim, while the defense stresses the troubled family background of the person convicted. This could be supported by the statement made by a state funded lawyer involved in a case in Toyama in which a man was beaten to death. “Generally speaking I fear the punishment will be heavier than before (the new system came into effect) because lay judges may place more importance on the victims feelings.”19 This could also be supported by the views expressed after the first lay judges’ trial in Tokyo where Prof. Masahide Maeda of Tokyo Metropolitan University and an expert on criminal law and procedure commented on the sentence in the country’s first lay judge trial as slightly heavier than in past decisions. He said it likely reflected the sensibilities of ordinary people, as experienced through direct questioning of the defendant, listening to his words, including his apology and seeing his attitude. Prof. Maeda further commented that the appeal by the bereaved family for at least 20 years in prison, also might have effectively conveyed to the lay judges the pain the family felt. The courts assessment should reflect the sentiment of the people. He further added that from now, court decisions will be influenced by peoples common sense.20

But on the other hand, judges who took part in the mock trials at the Tokyo District
Court have expressed satisfaction working with the lay judges because it brought different opinions to the decision making process. This could be supported by the opinion expressed by Judge Masaya Kawamoto who said "At times when some thing were difficult to decide, it was good to hear different views, even though we came to the same conclusion in the end."

Now that the system has gained greater recognition, people may feel the increase burden of responsibility they will have as lay judges and consequently may be very worried.

The question still remains to be answered how the lay judge system would deal with the increasing crime rate in Japan, especially crimes committed by minors. The increase in crimes will flood the lay judges with confusing information. They may be influenced by media reports about the suspect’s upbringing, personal comments from friends and acquaintances and this may detract the presumption of innocence and thus prejudice the lay judges. Although the Supreme Court may insist that lay judges should only view the evidence presented in court to reach a verdict, it may be difficult for ordinary citizens who are not well versed in the law to do so. Thus I believe that the lay judges should use common sense, and consider the facts and evidence of the case carefully before giving their verdict. The standard over whether death sentences should be imposed can change depending on social situations. It is important for the lay judges to take into account the viciousness and motivation of the crime, the age of the defendant, the defendant’s previous criminal record, the nature of the crime committed, the emotions and sentiments of the bereaved victim’s family, and the overall impact on society. This is supported by the statement made by the former Justice Minister Okiharu Yasuoka, who commented on the introduction of the lay judge system as, “A degree of transparency in the current execution system is needed so that lay judges can make clear decisions about sentencing a person to death.”

Conclusion

The introduction of the lay judge system was the result of discontent with what has been termed a “precise judiciary,” in which cases rely on detailed fact finding procedures. Though the system has helped unearth the truth in criminal cases, it often results in prolonged court proceedings. Criminal trials serve two purposes, to uncover the truth and to appropriately and promptly apply criminal laws and regulations. Under the lay judge system, court proceedings will need to be carried out more swiftly than they are now. When ordinary people take part in the lay judge system and together with professional judges, try accused criminals, most trials are expected to wrap up in a matter of days. At the time of writing this paper (September 2009), trials have already been concluded, four lasted only three days, while the trial involving a foreigner lasted four days as interpreters were used. In the future, it may result in difficulties and take a longer time if the lay judges to go into finer details of a criminals motive and background in ruling. Lay judges, who are ordinary people without a legal background will have to understand enormous information which is unfamiliar to them, and this may be a burden on them. In fact, after the Tokyo trial one of the lay judges commented. "I think cases involving witnesses, and cases in which the defendant might face the death penalty cannot be concluded in four days." Another lay judge also expressed concern that in some future trials the time limit set might be too tight. In the future, there may be cases where the defendant may face death penalty and it may become a challenge to set a time limit that would be too heavy for lay judges to bear in such cases. Some of the citizens selected to serve as lay judges are worried that lay judges may determine the verdict and sentence based more on emotions than objective fact. Some feel uncomfortable about judging people in a short time without a legal background.
It seems many people remain reluctant to be involved in serving as lay judges and handing down sentences including death penalty and critics have raised question over what they call the “too strict lifetime secrecy obligation imposed on lay judges.” The obligation exists so that everyone can state their opinion freely during closed door discussions. But this could prevent lay judges from blowing the whistle on the mishandling of the direction of discussion by professional judges and say the obligation will make it difficult to study problems in the lay judge system.

As already mentioned in the first part of the paper, six citizens are chosen randomly from the list of eligible voters will together with three professional judges hear initial trials. But most of the people selected to serve as lay judges have expressed dissatisfaction because a large number of people are summoned on the day of the trial, and only six are selected by lottery. For example, in the first lay judge trial in Tokyo, 47 of the 49 people summoned were present in court and only six were selected to serve as lay judges. The remaining 38 were dismissed after they collected their transportation costs, daily allowance and other expenses. This procedure of summoning many people and selecting only six is a waste of time and money. In fact, a male civil servant from Suginami Ward in Tokyo said “It’s a problem not knowing until the day of the trial whether you’ll be selected to stand.” Mayor of Mitaka, Tokyo Keiko Kiyohara commented that majority of the lay judges came to the court shows the strong sense of responsibility of the Japanese people.

Another employee working for a pharmaceutical firm who had filed a request to be absent from work during the period of the trial, felt “half disappointed and half relieved” upon learning that he had not been chosen as a lay judge for the murder trial. A court insider commented “Perhaps we initially summoned too many people.” A senior judge said that each district will have to consider reducing the number of people it summons. But the judge went on to point out the difficulty of making such a decision saying that it is also possible that the attendance rate will fall and it would be dangerous to suddenly reduce the number of people summoned based on the data from this trial alone. At the Tokyo trial, five of the six selected lay judges were women. This was because there was a lottery, but it would be better to have a more balanced process of selection and think it would have been appropriate to have equal number of men and women as this would not prejudice the judges.

The lay judge system aims to have citizens use their common sense to assess relevant facts and not complex legal arguments. Citizens serving as lay judges must mentally prepare themselves for the possibility of examining criminal cases and decide on the kind of punishment that would be appropriate in the light of the severity of the crime allegedly committed by the accused. The Supreme Court has introduced a system for searching past sentences handed down for reference when determining appropriate punishments. Terminals installed in district courts and their branches across the nation allow data to be retrieved on about 2,300 sentences handed down since April 2008. The data is organized into 10 categories, such as whether the crime was premeditated and the types of weapons used. By entering information via a terminal, similar cases and a range of appropriate punishments are displayed in the bar chart format. In fact, when the first trial in Tokyo was conducted, the attorney for the defendant was able to find about ten similar cases. Though such information may help lay judges to have active discussion about an appropriate punishment, it may also prevent sentences being handed down that differ widely from similar cases.

It is also important for those who take part in the new system describe their experiences and their duties and share such information with society. This will help people to familiarize
themselves with the system and encourage them to participate in the judicial process.

Although the lay judge system will have its weaknesses, there is no doubt that the involvement of ordinary citizens in the process of handing out justice will bring many changes to the way legal professionals operate. As a consequence, the system will be fairer and more transparent than before. Under the conventional system, there had been so many things that only make sense to professionals, but with the lay judges asking their own questions it will lead professional to reconsider those things. This will be of significance not only to the lawyers but to the legal system as a whole. The new system will increase transparency in the criminal trial system which has a history of being slow, often taking months, even years to reach a final verdict. With the lay judges on the bench, court procedures will have to be straightforward and clear enough for non professionals to understand and speed up to reach the final verdict.

. Although it seems that the duty of the lay judge is very hard, I believe it can contribute to society. This system provides an opportunity for ordinary citizens to understand the merits and demerits of the case based on the facts and evidence presented by legal experts. It would also help the lay judges to condemn and understand the gravity of the crime rather than the criminal.

Having analyzed the ruling given by the lay judges in the five trials held so far, experts say that the Tokyo ruling was relatively harsh on the defendant when compared with the ruling in similar cases. Professional judges would normally seek a 10 year prison term or so in such an accidental case. In fact, prior to the start of the lay judge system, experts had predicted sentences under the new system would change with one veteran judge saying rulings “might be relatively harsh on defendant.” In some cases, when taking into consideration the victims’ opinion or be relatively light in other cases if the panel feel sympathy for the defendant"27

It is observed that cases decided by lay judges, the ruling had been made on the third and fourth day of the trial. Under normal circumstances involving professional judges the trial would have lasted for a longer period until the ruling was given. In that sense, the lay judge system is quick in dispensing justice. But it may have taken a different turn if the cases decided by the lay judges had been similar in nature to the curry poisoning case in Wakayama. In this case, death sentence was upheld by the Supreme Court for killing four and sickening 63 others in 1998. Ninety five hearings were held in that trial and 171 people, including 23 residents in the affected community testified.28 Although Hayashi’s motive was never established in the first trial, the Supreme Court upheld the ruling saying lack of motive did not negate the circumstantial evidence accumulated by prosecutors suggesting she was the perpetrator. The top court’s declaration that an established motive is not essential to determine a person guilty holds significance for future cases. Criminal investigation and trials usually regard a confession from the suspect as a crucial piece of evidence, but the ruling in this case shows a conviction can be obtained on the strength of other evidence.29 If a case similar in nature to the Wakayama curry poisoning case is examined in the lay judge system, it will take more than 20 hearings and several months before a ruling can be delivered, even if the main facts in dispute are established before the first hearing. Although authorities have stressed that most cases last only three days, but the question arises how serious cases that could result in life imprisonment or death penalty be judged in such a short time under the lay judge system. It will take longer and I wonder if those selected to serve as lay judges would be ready for all that. A company employee who was selected to serve as lay judge
felt he was compelled to perform his public duty and started taking great interest in crime-related news reports. He said that he is worried in case he makes a wrong decision in a trial in which there is no confession from the defendant and only circumstantial evidence, as it happened in the curry poisoning case in Wakayama Prefecture.

The ruling given in the Hikari double murder case would also have similar implications for the lay judge system. In this case, death sentence was handed down to the defendant who was 18 at the time he murdered a woman and her 13-month-old daughter in 1999 in Hikari, Yamaguchi Prefecture. In this case, many factors such as the degree of viciousness of the crime, the motivation of the crime and how the crime was committed, especially the manner in which the victims were killed, the result of the crimes and the number of murdered victims, the sentiment of the victim’s bereaved family members, the impact of the crime on society, the defendant’s age previous criminal record and the degree of remorse shown by the defendant were taken into account in the ruling. It is important for lay judges to decide to render judgements such as capital punishment, in such cases. The ruling in Hikari’s double murder case would shed light on the judgements made by lay judges. According to Prof. Kenji Nagata, a specialist in judicial punishment standards, the ruling in this case was partly due to increased public interest in crime victims and the trend seeking stricter punishment for offences committed by minors as well as sex crimes.

The ruling in Hikari’s case could be supported by the views expressed by Judge Masaya Kawamoto, currently working in the administrative division of the Supreme Court who said professional judges have resorted to the death penalty when a crime is deemed extremely grave, weighing the motive, the sentiments of the victimized and the social impact of the case. As more than 80 percent of the Japanese express support for capital punishment, lawyers are concerned that more convicts will be placed on death row as lay judges might place greater weight on the feelings of the victimized. On the other hand, Professor Yuji Shiroshta of the School of Law of Hokkaido University argues that the current standard won’t change dramatically because the judges will adjust the discussion. In addition, even if all six lay judges seek capital punishment, if the professional favors life sentence, that will be what is handed down. Professional and lay judges should discuss whether execution is unavoidable based on arguments from both the prosecutors and defense lawyers. But so far there had not been mock trials that involved death penalty and there may be cases in the future. So it is difficult to decide without actually facing the real facts of the case.

Cases that will be tried under the lay judge system are often not very complicated compared with cases related to the financial system or the stock market. They are straightforward and easy to understand was a comment made by Shozo Fujita, director of the Saibanin Trial Department of the Supreme Prosecutor’s Office. “Thus it is possible for us to narrow down” the necessary evidence and keep examinations short, while proving what needs to be proved. Professor Nobuo Gohara of Meijo University supports this view by saying that opening up the legal system to the public is important, cases that will be handled by lay judges should have been involving political funds or businesses, because the public is more familiar with these offenses than heinous crimes.

Professor Jiro Hirano at Gakushuin Women’s College refers to lay judges as ordinary people, and there is no doubt the media influences them even though they must base their verdict solely on the evidence presented in courts. The public is aware of the media’s influence. A Kyodo News poll in March 2008 found that 90.3 percent of the respondents think news articles will influence lay judges and 62.8 percent agreed with some judges and
lawyers who said crime reporting needs to be changed to make sure the media do not bias lay judges. As there is an overall lack of legal education of the public on the justice system itself and media crime reports could bias ordinary people.

The adoption of the new criminal trial system is expected to cause major ripples in society from a shift in public perception toward the justice system to a change in the media’s criminal reporting policies. The new system is supposed to deepen the public’s understanding and trust in justice, while also ensuring ordinary people’s view are properly represented in criminal trials once handled only by professionals. Thus, it is important for legal professional to ensure that the process is understandable for the average person. Lawyers must make an effort to persuade the lay judges to be fair and do the right thing. The fact that lay judges serving on trials along with professional judges has already brought about many changes to the criminal justice system in Japan. Time and more lay judge trials will help tell how much more change and how much real progress are stimulated by Japan’s criminal trials. The Lay Judge Law calls for the government to review the lay judge system three years after its introduction, if necessary and improvements to the existing Lay Judge Law may be suggested.

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