

Reconceptualization and Legislative Improvement of Workplace Violence

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Abstract

A growing concern on workplace violence has provoked the Western countries to promote diverse discussion concerning its concept and definition. The point in dispute is whether workplace violence should be restricted to only physical violence or include even verbal violence and psychological abuse. The so-called advanced countries consider workplace violence seriously and strive to develop policies and legislations to protect victims. However, the Korean government has yet paid little attention to workplace violence and made low effort for preventing it at the national level. This study first redefined the concept of workplace violence in criminal and normative views and then suggested a legislative improvement plan such as the establishment of aggravated punishment for persons who abuse their dominant position and commit workplace violence.

Key words: workplace violence, workplace bullying, legislative improvement, dominant position abuse, aggravated punishment

Master's

1. Introduction

Recently a lot of people were shocked when a suspicion that a senior general and his wife in South Korea habitually made a verbal abuse and threats to a subordinate soldier was disclosed. Last year, there was an incident that a young prosecutor committed suicide due to being overcome with the habitual abuse in a chief prosecutor as his superior. In 2015, the so-called 'peanut return' case that a high ranking executive at a major airline redirected the aircraft with using violence and abuse against

a flight attendant became the issue socially. And the incidents of being exposed in the wake of what the business leaders strive for verbal abuse, violence or improper instructions against a chauffeur are being poured out in a row. However, some of these incidents, which appear in the press, are those mostly caused by the upper echelon people of society, thereby having an aspect that attracted the attention of public opinion.

In reality, numerous workplace violence incidents, which are made among employees, are being buried with failing to be known to the world owing to many

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reasons such as Korean-style corporate culture, etc. Rather in the position of office workers as common salary men, there is a higher possibility that experienced or will come to experience henceforth a violence caused by a superior officer or a colleague at work with a frequent contact at ordinary times. Its shock and aftereffect are serious as well.

According to a special report that was announced in 2011 by the United States Department of Justice, the non-critical workplace violence incidents, which broke out in the whole U.S. for the year in 2009, are being said to reach about 570,000 cases. This corresponds to approximately 24% of the whole violent crimes targeting office workers(Harrell, 2011: 1). Meanwhile, the period from 1993 to 1999 in which a workplace violence rapidly rose in America is mentioned to have been occurred a workplace violence crime of standing at about 1,740,000 cases for one year(Duhart, 2001: 1-2). According to a Korean press release, it is said in case of South Korea that about one out of 6 office workers(15.3%) ever encountered physical violence in the workplace. A person who used violence was the largest in an immediate supervisor. And the next was in order of CEO • executive, and co-worker. A considerable number of victims (68.7%) are said to have just refused to become discouraged without taking a special action despite having faced workplace violence(Nocutnews, Jun, 21, 2016.¹⁾).

The workplace violence brings about great damage and side effect even to the organization to which they belong, as well as to an individual. Especially, it leads to the damaged employees' drop

in job satisfaction and growth in turnover rate, and to a reduction in productivity caused by this, as well as to a loss caused by civil lawsuit, disciplinary action, and criminal punishment(Lee, 2011: 210). There is also a case that spreads to the secondary deviation and violence, and radically even to suicide with leading sometimes to dissatisfaction and fury at offender or organization(Byun, *et. al.*, 2009: 315).

As the social seriousness and side effect of workplace violence strongly emerge in this way, various researches began to be performed in the West in relation to definition of workplace violence. The attempts for seeking causes and countermeasures are becoming active including a fundamental discussion about a concept of workplace violence or workplace bullying. In particular, there is a sharp conflict between opinions as for whether the workplace violence will be considered in a broad sense or in a narrow sense. It seems to be a little dominant these days in an opinion of covering verbal and psychological violence in addition to physical violence. On the other hand, in case of South Korea, a variety of workplace violence incidents took place continuously, thereby having become a social issue. Nevertheless, researchers' interest in a concept of workplace violence tends to be low. It is difficult yet to find even a research on a criminal policy-based alternative plan or legislative improvement in order to regulate and prevent workplace violence based on the defined concept.

A problem that will need to be established most preferentially in inquiring into a crime phenomenon is just a concept definition. Of course, a slight difference in an opinion about a concept of workplace

1) <http://www.nocutnews.co.kr/news/4610972>(Search date, Aug. 25, 2017).

violence may exist. But a research hypothesis and a measurement tool based on this come to be established only when being systematically established a definition that is generally accepted in the academic world. Also, only when the concept definition needs to be specific so that there is no room for questions if possible, it is not only easy for a theory on its crime phenomenon to be applied to reality, but also becomes an important prerequisite for a legislative review.

This study will establish a new concept of workplace violence in line with the real state of South Korea from the perspective of normative science through referring to the definition of domestic violence and school violence under the current law in South Korea and to the French criminal law(Code de pénal), which has the rules of punishment concerning workplace bullying, after inquiring into previous researches relevant to the definition of workplace violence and into the preventive policy for workplace violence in some countries including South Korea. And based on the new concept, a legislative improvement plan will be suggested such as the aggravated punishment against the crimes of workplace violence of using a dominant position.

II. Theoretical background

1. Definition of workplace violence

1) A dispute over a concept of workplace violence

A concept and a scope of workplace violence have been varied depending on a change in historical situation or in a violence victim's recognition. In the Industrial Age, the physical violence occurred frequently between low and high in the workplace

or between coworkers. Thus, only such kinds of violences were defined(Kim, 2009: 174). Even these days, the workplace violence is limited just to direct physical violence against a coworker. Thus, an opinion exists that distinguishes it from workplace aggression or workplace bullying(Baron & Neuman, 1996: 161; Keashly, 1997: 86-87). Especially, O'Leary-Kelly, *et. al.*(1996) are mentioning that 'organization-motivated violence' is a significant negative effect on the body or property caused by the result of aggressive behavior within an organization. Wykes & Whittington(1991) also emphasized that only the direct and physical violence corresponds to workplace violence.

However, according to what an interpersonal conflict is getting frequent in the workplace due to non-violent violence such as verbal abuse, bullying, mobbing and to what the seriousness of its damage is being magnified, researchers tend to grow who define even a concept of workplace violence in a broad sense. Especially, the argument as saying that even the emotional abuse as well as the verbal violence such as verbal abuse, threat, intimidation, spreading rumor should be involved in the category of workplace violence is proceeding with gaining ground.

Bowie(1996) ever defined workplace violence as the actual verbal • emotional intimidation or physical aggression, which is committed by one person, many coworkers or organization against an individual or the individual's possession in the process of performing job. Budd, *et. al.*(1996) stressed that workplace violence is a multi-dimensional phenomenon of being reflected the seriousness in diverse levels such as threats of attack. Leather, *et. al.*(1999) also defined

workplace violence as abuse, intimidation or violence of threatening office workers' safety, happiness and health explicitly or implicitly under the environment related to workplace. Chappell & Di Martino(2006) divided workplace violence into physical violence and psychological violence, and then ever presented a case of each type in detail. Barling, *et. al.*(2001) contained even invisible aggression like shouting in workplace violence. Rogers & Kelloway(1997) mentioned that a damage behavior against the property in other person's possession corresponds to workplace violence.

ILO(International Labor Organization) had regarded only physical violence as workplace violence in the past, recently included even psychological violence in a type of workplace violence, and reported that psychological violence of being used repetitively brings about a serious outcome in a victim's mental health(Chappell & Di Martino, 2006: 17). Even OSHA(Occupational Safety and Health Administration, 2002) under the influence of the U.S. Department of Labor ever interpreted broadly the workplace violence into physical violence, threat and verbal abuse, which break out inside and outside a workplace against employees. HSE(the National Health and Safety Executive) in the United Kingdom also defined work-related violence as an incident of being abused or threatened mentally or physically amidst the environment relevant to workplace(Budd, 1999: 2).

In case of South Korea, a discussion about the concept definition on workplace tends to be not so many. Byun, *et. al.*(2009) explained that workplace violence is a concept of including even the unethical conduct of hurting emotionally as well as the violent criminal act such as sexual harassment, injury and

murder, and the aggressive behavior, which occurs in the workplace. Kim(2009) also defined workplace violence as all the comprehensive harmful behaviors that break out in the job-related place and time. Also, Choi, *et. al.*(2003) explain that the blatant violence is apt to be exposed and has high possibility of being punished in the workplace of modern society that an iterative interaction is being made among members. Accordingly, they claimed that the weight of verbal and psychological violence with a relatively less risk of disclosure or punishment cannot help getting higher.

The workplace violence needs to be considered to be a kind of crime phenomenon simply beyond organizational or social issue, thereby having no choice but to result in a normative problem such as whether there is possibility of receiving a criminal penalty because its violent behavior ultimately corresponds to a crime based on the criminal substantive law in reality, and further as whether the punishment level will be reinforced through separately enacting a special law. By the way, in the existing discussions about a concept of workplace violence, many researchers are expressing diverse opinions, respectively. But the perspective of criminal normative science is being generally ignored. To clarify elements of workplace violence and to examine a legislative improvement plan based on this, its concept needs to be preferentially redefined from the viewpoint of normative science.

2) Similar concept : Workplace aggression

A considerable number of researchers are conceptually using workplace aggression along with workplace violence. But examining strictly,

it is a different concept available for distinction. In other words, the workplace aggression may be defined as an effort in every form that tries to harm others with whom they work, or have worked, or the organizations in which they are presently, or were previously, employed (Neuman & Baron, 1998: 395). Even if workplace violence is defined as a concept of a broad sense, which contains all the physical • verbal • psychological violence, this is a sub-concept of being involved in the category of workplace aggression. Schat & Kelloway (2005) explain that the workplace aggression is applied even a potential aggressive propensity as well as an individual's intentional act of trying to damage a coworker physically or psychologically. In addition, Dawood (2008) is also defining the workplace aggression as a concept of covering harmful behaviors in every type such as workplace bullying, incivility, antisocial behavior, and emotional abuse including workplace violence.

Meanwhile, *et. al.* (1998) drew 3 typical types dubbed (i) expressions of hostility, (ii) obstructionism, (iii) overt aggression through a factor analysis on sub-variables of workplace aggression. The expression of hostility is relevant primarily to verbal or symbolic aggressive behavior. As the obstructionism is what mainly disrupts the target's task performance or capability display, it is related to aggression in the passive • defensive form. The overt aggression implies direct behavior in order to damage other person's physical or psychological well-being. That is to say, it is relevant to physical attack (pushing, hitting), threat, destruction of personal property belonging to target, damaging

company property, and deliberately destroying mail or messages needed by the coworker.

2. Type of workplace violence

As explained in the above, a discussion was made with the focus only on physical violence that breaks out primarily at a job in the past. Hence, there was no great significance in classifying workplace violence based on a form of violence. However, as various side effects and evils emerged according to non-violent violence with entering the modern times, it now became a general tendency to divide workplace violence into physical violence and non-physical violence depending on a form of violence (Chappell & Di Martino, 2006: 17).

In a research of perceived violence climate, Spector, *et. al.* (2007) conducted a research with dividing a type of workplace violence into physical violence and verbal aggression. Chappell & Di Martino (2006) described that they classified workplace violence into physical violence and psychological violence and then suggested specific cases on each category. Especially, they took a typical case of psychological violence as sexual harassment, bullying, and mobbing. Choi, *et. al.* (2003) divided workplace violence into physical violence, verbal violence, and psychological violence, and then mentioned that there are more aggressive behaviors in a tactful and implicit form than physical violence of giving serious damage directly to other person's body. There is description below focusing on 3 types of physical • verbal • mental (psychological) violence that Choi, *et. al.* (2003) presented.

1) Physical violence

The physical violence has a characteristic as saying that a damage is immediate and extensive compared to other types of violence in a regard of giving an extremely psychological shock and stress along with this even if being an important point even to inflict a pain or an injury directly on other person's body(Choi, *et. al.*, 2003: 412). The physical violence is generally manifested mainly in the form of assault under the criminal law. Violence in the criminal law implies an act of infringing on the completeness of the body through using a force in other person's body(Lee, 2014: 42). However, it does not certainly require a direct force on the body. What uses an indirect force in some cases, or applies even a force to a thing, not to a person's body is regarded ever as violence(Lee, 2014: 59-60). In other words, the physical violence is included an act of throwing document and others at the opponent, an act of stabbing a finger at the opponent's face at a short range, and an act of pretending to hit the opponent.

2) Verbal violence

The physical violence causes a physical pain or injury, and a property-based damage in some cases to the opponent. On the other hand, the verbal violence tends to be low in possibility of leading to this direct and visible outcome. There are many cases on the contrary that alert the opponent to feeling humiliated or shameful and make the opponent experience emotional devastation such as anxiety, rage and depression. In that the repetitive verbal violence may inflict a more intense mental pain sometimes than the one-time physical violence, the correct understanding about its

seriousness is needed(Choi, *et. al.*, 2003: 413).

There are many cases that the verbal violence within the workplace is usually manifested in the form of violent language and swear word in the character assassination, of spreading rumor or false information on a specific person, and of the threatening words. If these actions are criminally problematic, there is high possibility of being punished an abuse and a curse in a situation that other people see and hear as the charge of insult, spreading a rumor or false information as the charge of libel, and the threatening words as the charge of threat. But there are most cases that the verbal violence, which occurs within the workplace, fails to reach the level of being established a criminal offence. It is the reality in South Korea to be not easy for a victim to officially report or raise a question even if having been afflicted with serious verbal violence in a criminal level by a superior. Moreover, it is not simple at all for a victim to prove an offender's crime even though being investigated actually by a company itself or being created even a criminal suit.

3) Psychological violence

Depending on a researcher, the psychological violence and the verbal violence are used together or separately. Chappell & Di Martino(2006) saw psychological violence as a concept of containing non-physical violence in diverse forms such as verbal violence. In the meantime, Choi, *et. al.*(2003) attempted the differentiation from verbal violence through using terminology dubbed mental violence. That is to say, Choi, *et. al.*(2003) ever defined mental violence as a type of violence that indirectly causes a bad effect on a victim's emotion

even if being not expressed through clear language.

The workplace bullying or harassment, which is the most representative psychological violence implies the action that an individual or a group of having relatively strong power within the workplace attacks repeatedly or systematically for a fairly long time targeting an individual who is weaker than oneself (Einarsen, 2000: 381; Salin, 2003: 1214–1215). Dawood (2008) took the conceptual elements of workplace bullying as (i) duration, (ii) repetition/frequency, (iii) power imbalance, (iv) intent to cause harm. Barron (2000) mentioned that the workplace bullying is indicated as various behaviors such as continuous slander and underestimation, but that the possibility of leading really to criminal penalty is relatively low. In other words, the workplace bullying is characterized by being performed more secretly and tactfully rather than explicit verbal violence, and by being used continuously, repetitively and indirectly. Typical cases are very diverse such as mobbing²⁾, an act of openly disregarding or criticizing a specific person's opinion, verbal sexual harassment, and continuing to give only a task in a lower level than the capability that an individual has (Neuman & Baron, 1998: 396; Salin, 2003: 1216).

III. Workplace Violence Prevention Policy

1. Workplace Violence Prevention Policies and Legislations of Foreign Countries

Following the 1990s, many foreign developed

countries are giving impetus to modifying various laws and regulations and arranging the workplace violence prevention policies in order to regulate workplace violence and workplace bullying with perceiving that the workplace violence is becoming a harmful element to physical and mental health as well as infringing on a worker's personality right.

In France, a concept of psychological bullying (*harcèlement moral*) was adopted in Labor Code (*Code de travail*) and penal code (*Code de pénal*) in 2002. Workplace violence became a subject of independent legal sanction. Also, even just judicial precedents at the Supreme Court that are sentenced in relation to workplace violence exceed about 200 cases for a year. This is what disproves that a social consensus over workplace violence was fully formed within France and that a relief system for the victimization of workplace violence is working substantially (Gu, *et. al.*, 2015: 205; Jo, 2012: 39). According to the French labor law, the mental harassment is defined as 'iterative bullying behavior that aims to infringe dignity as a human being or to damage physical or mental health, and professional prospect, or causes such results.' A business owner has a duty of preventing mental bullying and needs to certainly take the disciplinary action against an offender. Meanwhile, even the French criminal law is newly established a separate clause pertinent to mental bullying and is being provided in order to be available for criminal punishment against a harmful act (Gu, *et. al.*, 2015:

2) Mobbing is used most intelligently and tactfully. In the past, it has been recognized as the phenomenon that occurs mainly in a school or an adolescent peer group. But this pattern is being spread recently even among office workers who are adults. Mobbing gives a victim a psychological wound such as frustration or depression, and also motivates a victim in some cases in order to have a radical and aggressive response such as suicide, revenge attack, and murder (Choi, *et. al.*, 2003: 414).

172–173).

Unlike France, England has no law that specially regulates only workplace violence or workplace bullying. Still, there are the Protection from Harassment Act(1997), which regulates the whole bullying behaviors, and the Equality Act(2010), which regulates only differential bullying. However, just these legislations are difficult to be expected effective regulation in a level like France. Still, the United Kingdom is compelling business owners to have a legal duty, which will require the minimization of exposure to the risk of violence at work based on the Health and Safety at Work Act(1974)(Gu, *et. al.*, 2015: 207; Chappell & Di Martino, 2006: 151).

Sweden was published the general and epoch-making Enforcement Decree of the Work Environment Act pertinent to workplace violence in 1993. The official name is ‘Swedish Ordinance on measures for the prevention of violence and menaces in the working environment.’ The enforcement decree in the above is evaluated as the world’s first ordinance, which is independently addressing the victimization of workplace violence, and is suggesting important standard to many other countries(Chappell & Di Martino, 2006: 155–156).

In case of United States of America, the guideline that OSHA(the Occupational Safety and Health Administration, OSHA) presented in 1995 is playing a very important role in preventing workplace violence. This guideline is utilized in the process of investigation and trial on specific issue, and has influence even upon the final decision of a law court. The guideline is addressing a variety of

issues such as the establishment of violence prevention program, the workers’ participation in a program, a risk analysis of workplace violence, the prevention & control, the educational training, and the record management & assessment(Chappell & Di Martino, 2006: 151–153).

The province of Quebec in Canada is declaring that all employees have a right to work in the middle of free workplace environment from psychological bullying through ‘Psychological Harrassment at Work Act’ in 2004. Meanwhile, the province of British Columbia adopted Occupational Health and Safety Regulation in order to protect workers from workplace violence in 1993(Chappell & Di Martino, 2006: 149–150, 157–158).

In the meantime, Japan, which has similar corporate culture to South Korea, has no special law of regulating workplace violence, but has been already made a social discussion about workplace violence from long before. In particular, unlike South Korea in which the present status of workplace violence is not being even grasped, Japan carried out diverse surveys focusing on the government authorities with addressing this as an important social issue. Especially, the Ministry of Health, Labour, and Welfare in Japan did set up ‘a round-table conference related to workplace bullying problem’ in 2011, develops the positive policy response and publication activity in terms of workplace ‘power harassment(パワー・ハラメント)³⁾, and is steadily progressing even a discussion for lawmaking(Gu, *et. al.*, 2015: 164–165).

3) In Japan, the workplace bullying is called ‘パワー・ハラメント’ or ‘パワハラ’ in abbreviation as a meaning of ‘power harassment’ that combines ‘power’ and ‘harassment.’

2. The reality of workplace violence prevention policy in South Korea

In case of South Korea, it is a very feeble level yet in the policy development and legal modification for preventing and regulating workplace violence. Korea's current law is failing to suggest the specific definition provision pertinent to workplace violence or workplace harassment. It is the real situation of being considerably poor in the government's effort to arrange a countermeasure for preventing workplace violence.

In The Labor Standard Act of Korea, Article 8(prohibition of violence) is stipulating that "an employer shall not assault a worker for any reason." This article is nearly a unique clause related to workplace violence under the current law of South Korea. It regulates only an employer's violence against a worker. But the violent action against a superior officer or a coworker is not the subject of regulation⁴⁾. For this reason, an offender of workplace violence crime is just applied the criminal law mostly that is general law. It is contrasting to a case of 'school violence' or 'domestic violence,' which is being strictly regulated along with the explicit concept definition through enacting a special law. It is the same as what even the government authorities' policy-based response is poor. A survey on the present condition of workplace violence in the governmental dimension has failed to be properly implemented. Even the concept definition of workplace violence or harassment has never been announced formally. In

this way, there is no separately special law of regulating workplace violence. There is no ordinance either that is clearly stated a concept of workplace violence. Even the government's policy-based reaction is slow. Thus, it is the real situation that general citizens are lacking in perception as saying of being likely able to receive criminal punishment given being serious as well as of the civil liability for damages even if being verbal violence given committing workplace violence(Mun, 2016: 231).

Still, the activity in the legislative dimension is notable these days in order to solve this legislative incomplete situation and to strengthen regulation pertinent to workplace violence. For a reason that workplace harassment not only has negative effect on a worker's mental • physical health, but also causes a huge burden even to an affiliated company, thereby being needed a countermeasure against this, 14 lawmakers proposed the revised bill of he Labor Standard Act, and the revised bill of The Occupational Safety and Health Act⁵⁾ at the same time in October of 2016. The revised bill of The Labor Standard Act arranged a plan of protecting a victim caused by workplace bullying such as prohibiting workplace harassment caused by an employer and a worker and as allowing an employer to conduct the workplace bullying prevention education. Examining more specifically, they are as follows; ① An employer and a worker shall not do any act of inflicting physical • mental torture with deviating from the reasonable range of a task,

4) An employer who assaulted a worker with violating the above provision will be sentenced to a maximum of five years in prison or 30 million won in fines(『The Labor Standard Act』 Article 107).

5) There is a need to compensate same as industrial accident even for a damage caused by workplace harassment, which harms a sound working opportunity. Thus, the major contents are set to include death or disease caused by workplace bullying in the category of industrial accident.

or of exacerbating the working environment through using workplace superiority such as a workplace position or a human relation inside and outside a workplace. ② An employer needs to carry out education for preventing the workplace harassment targeting employers and workers in order to prevent workplace bullying and to form the conditions that employees can work in the safe working environment. ③ An employer should reprimand a doer or take action equivalent to this beside that without delay in case of being confirmed the occurrence of workplace harassment. ④ An employer shall not dismiss a damaged worker or take any adverse action in relation to the workplace bullying.

However, these revised bills are just in the pending state without even a special discussion at the Environment and Labor Committee, which is the standing committee under its jurisdiction, even until now about 1 years after having been proposed formally.

IV. Discussion on New Concept of Workplace Violence and Legislation

1. Re-definition of Workplace Violence

The followings are the logics of supporting the conceptual validity of workplace violence in a broad sense. First, non-physical violence happens relatively frequently compared to physical violence. Thus, a more accurate depiction on the experience of the overall workplace violence comes to be available only when including the former (Barling, *et. al.*, 2009: 674). Second, it is a point that the seriousness of the outcome caused by non-physical violence is no less than physical violence in a

victim's position (Budd, 1999: 2). Third, the reason is why there are many cases that violence is developed ultimately into the physical violent act with starting initially from relatively slight action such as continuous bullying or mockery (Mayhew & Chappell, 2001: 2).

there is also a discussion about whether workplace violence will need to be available for criminal punishment due to corresponding to a crime under the criminal substantive law. Barron (2000) argued that the decisive standard of distinguishing workplace violence and workplace harassment relies upon the appearance of criminal elements. He reported that the workplace violence requires elements of a crime, namely, overt physical actions (assault, threat, damage, etc.) available for leading to criminal punishment, thereby being unable to contain simple harassment without these elements in the category of workplace violence (Barron, 2000: 63-64).

In the writer's personal opinion, the workplace violence needs to be a concept of having a definite type of behavior such as physical or verbal aggression, and the possibility of criminal punishment. That is because of being able to advance into a stage of newly establishing a criminal punishment clause based on the principle of legality ('void for vagueness') only when these clear and concrete crime elements are premised. Accordingly, it is considered to be desirable to include only physical violence and verbal violence in the category of workplace violence and to define psychological violence as a special concept of being discriminated from workplace violence.

There seems to be no specially different opinion about which the workplace violence contains even

the violence, which happened during performing a task outside the workplace, as well as the violence, which takes place inside the space dubbed workplace. That is to say, a concept of workplace would be good to be the middle way that an offender or a victim was doing what is related to job just in the place with the occurrence of violence, without being interpreted as a meaning of specific space called building or office(Choi, *et. al.*, 2003: 409). In the private opinion, even the violence between coworkers regardless of a task in a place except workplace is thought to be necessarily included in workplace violence given being the violence that a victim used own dominant position. For example, even a case that a superior attacks a junior staff during which a superior and a junior staff of the workplace have a drink privately at a pub after leaving the office is appropriate for being regarded as being involved in workplace violence.

'School violence' or 'domestic violence' whose structure is similar to workplace violence is being separately regulated by enacting a special law, respectively, like 'Act on the Prevention of and Countermeasures against Violence in Schools' or 'Act on Special Cases Concerning the Punishment, etc. of Crimes of Domestic Violence', 'Act on the Prevention of Domestic Violence and Protection, etc. of Victims' in South Korea. Compared to this, a case of workplace violence was explained in the above that even an official concept definition is failing to be arranged yet in the governmental dimension let alone special legislation. There is a need to see the concept definition under the special law pertinent to school violence or domestic violence ultimately in order to newly establish a concept of workplace violence.

A legal concept of school violence is an action of being accompanied the physical • mental or property damage by injury, assault, confinement, intimidation, capture, defamation/insult, extortion, coercion, sexual violence, compulsory errand, mobbing, which took place targeting students inside and outside a school. In other words, the school violence is aimed at prevention or guidance, not punishment. Thus, its concept is also considerably wide. It is contained even psychological violence like compulsory errand or mobbing of not corresponding to a criminal offence. Meanwhile, a legal concept of domestic violence is defined as an action of accompanying physical, mental or property damage between family members, thereby being relatively abstract. However, a concept of 'crimes of domestic violence' is separately defined other than a concept of domestic violence. A domestic violence crime implies the offences such as injury • assault • abandonment • abuse • confinement • intimidation • rape • indecent act by force • defamation • insult • coercion • threat • property damage among actions of involving physical, mental or property damage between family members. The school violence and domestic violence crime have some common grounds conceptually. Firstly, it is a point of having a type of behavior as offences such as injury, assault, confinement, threat, defamation, insult, intimidation, coercion. Secondly, it is a point of being an action accompanying physical • mental or property damage.

This study aims to define a concept of workplace violence as follows through making many discussions about a scope and a place of workplace violence and synthetically considering a legal concept of school violence and domestic violence.

That is to say, workplace violence implies ‘an action of accompanying physical • mental or property damage to a victim owing to physical attack(injury, assault, property damage, etc.) or verbal aggression (threat, defamation, insult, coercion, etc.) targeting members in the same workplace inside and outside workplace.’ Furthermore, workplace violence is allowed to be divided into (i) ‘general workplace violence’ that happens between equal workplace coworkers, (ii) ‘workplace violence in a type of abusing a dominant position’ of committing violence against the weak through using workplace supremacy such as own workplace position or human relation in a person with high position or strong power in the workplace. What classifies workplace violence into two types in this way is because the former is punished on the basis of the existing statutory penalty according to whether or not corresponding to a crime of being prescribed by the existing criminal law, but because the latter needs to be regulated more strictly by newly establishing a separately additional–punishment clause.

Also, it was explained in the above that the workplace violence is being based only on two types of violence in physical and verbal violence, and that the psychological violence was excluded. Accordingly, even a concept of ‘workplace bullying or workplace harassment’ between workplace members needs to be defined again as an action of excluding physical violence and verbal violence. That is to say, it is desirable to distinguish it from workplace violence through partially modifying a concept of workplace bullying, which is being defined in the revised bill of The Labor Standard Act that was introduced in the above, and then through redefining it as ‘all

the actions of inflicting physical and mental torture escaping from an appropriate scope of a task or of deteriorating the working environment with using supremacy such as own workplace position or human relation as a method other than physical or verbal violence inside and outside workplace.’

2. Legislative improvement

As described, the revised bill of The Labor Standard Act, which was proposed in 2016, has the key contents as prohibiting workplace harassment caused by an employer and an employee, and as making an employer obligatorily carry out the workplace bullying prevention education. However, the current Labor Standard Act is just banning only an employer’s violence, but is not containing workplace violence caused by a worker(especially a superior officer). In this situation, the revised bill is focusing only on an abstract concept of workplace bullying. Thus, people may be given the perception at the slightest slip as saying that workplace violence, which happens between upper and lower workers doesn’t need to be regulated specially. But in fact, the physical and verbal violence that especially a superior inflicts on an inferior between workers is just the most serious type of workplace violence. Hence, with having matrix as the basic frame of the revised bill in the above, the workplace bullying, which was provided in the original text of the revised bill, needs to be expanded into a concept of workplace violence and workplace harassment as redefined in this study.

This study suggests the revision in the Labor Standard Act as follows; First, the title of Article 8–2 in the revised bill is modified as ‘prohibition of workplace violence and workplace harassment,

etc.’ Clause 1 stipulates that ‘an employer and a worker shall not inflict physical or verbal violence of accompanying physical • mental damage or property damage to other worker inside and outside workplace.’ Clause 2 prescribes that ‘an employer and a worker shall not take any action of inflicting physical and mental torture escaping from an appropriate scope of a task, or of worsening the working environment with using supremacy such as own workplace position or human relation as a method other than physical or verbal violence inside and outside workplace.’ Second, the new establishment of a clause titled ‘workplace violence crime of using dominant position’ leads to suggesting aggravating 50%p of the existing statutory penalty to a person who committed a crime of corresponding to injury, assault, property damage, threat, defamation, insult, coercion under the criminal law against other worker through using superiority such as workplace position and human relation. Eventually, the purport is to reinforce social alarm through strongly punishing a person, who committed workplace violence of using dominant position and power, at a level of habitual criminal.

Meanwhile, ‘workplace bullying’ needs to be examined about whether or not adopting the provision of criminal punishment. The terminology dubbed workplace bullying is not only very extensive in its range, but also conceptually ambiguous and abstract. Given excluding physical violence and verbal violence from the category of ‘bullying’, actions of bothering a person finally come to be literally left such as mobbing, neglecting opinion, scratching, and browbeating, etc. These actions are just the level of not reaching the

criminal offence. What puts punishment regulations in this simple harassment not only goes against the principle of legality(‘void for vagueness’), but also has highly likely possibility of unconstitutionality.

However, the bullying, which is used repetitively for a long time beyond the bullying of happening for once or intermittently, causes a serious shock and hurt to victims. Thus, even a legislation case exists that punishes with prescribing this iterative bullying as a criminal offence. France is its typical example. The French Criminal Code punishes the repeated workplace bullying with one year’s imprisonment and a 15,000 euro fine. Namely, to be punished by workplace bullying, three requirements need to be met such as (i) what the purpose or effect is the deterioration of working conditions[*qui ont pour objet ou pour effet une degradation des conditions de travail*] (ii) what may affect the opponent’s rights and dignity or impair physical or mental health[*susceptible de porter atteinte a ses droits et d sa dignite, d’alterer sa sante physique ou mentale ou de compromettre son avenir professionnel*] (iii) repeated acts[*les agissements repetes*](Yuen, 2005: 634–639). But in light of Korea’s reality that there are innumerable common office workers who commit workplace bullying without recognizing it is a crime, there will be no special inhibition effect just with coming to be mass-produced only ex-convicts in monetary penalty given coming to prescribe an action of bothering simply and repetitively as a criminal offence. There is great concern rather about being diverse just in a bullying method in order to avoid repeatability. Also, even a concept of ‘repeatability’ has no definite interpretation standard. Thus, the above-described unconstitutionality does

not decrease even if adding repeatability to elements of crime.

V. Conclusion

The improper practice that a person with a socially dominant position and power inflicts on a weaker person than oneself through using its supremacy is expressed as 'Gapjil' in South Korea. As a case of 'Gapjil' workplace violence in a superior officer against to an inferior reaching up a small-and medium-sized company and a large company including the public organization such as the military and the prosecution consecutively takes place recently in South Korea, it is becoming a socially important issue.

With being strongly emerged social seriousness and side effect of workplace violence in the Western countries, diverse discussion are being made in relation to the concept definition of workplace violence. In particular, the point in dispute, which is made the most fierce battle in terms of workplace violence, is a problem about whether a scope of workplace violence will be narrowly restricted only to physical violence, or will be regarded as a broad concept of containing verbal violence and psychological violence. This matter is related even to a problem of distinguishing among workplace bullying, workplace aggression, and workplace violence. Nowadays, an interpersonal conflict in the workplace is rapidly growing owing to non-physical violence such as violent language • bullying • mobbing. The insistence as saying of needing to extensively interpret a concept of workplace violence is gaining ground as the seriousness of its damage is magnified. The

government agencies in USA and UK, and ILO(International Labour Organization) also tend to recently include even psychological violence in a type of workplace violence unlike in the past. The so-called advanced countries such as France, Sweden, USA, and Canada are striving to develop policies along with various legislative efforts for protecting a victim with regulating workplace violence under the recognition on the seriousness of workplace violence following the 1990s. On the other hand, South Korea is yet in the real situation of being very low, compared to the developed countries, in a concern or an effort in the national dimension for preventing workplace violence.

As this study aims at encouraging an interest of the government authorities, the legislative branch, and the academic world in workplace violence, it redefined a concept of workplace violence from the viewpoint of the criminal normative science and presented a legislative improvement plan based on this.

The workplace violence, which was newly defined in this study, implies 'an action of being accompanied the physical • mental or property damage in a victim by physical aggression(injury, assault, property damage, etc.) or verbal attack (threat, defamation, insult, coercion, etc.) targeting workplace members inside and outside workplace.' Moreover, the workplace violence was divided into (i) general workplace violence, (ii) workplace violence in a type of abusing a dominant position. Based on a new concept that was defined in this way, an alternative was proposed revising a prohibition regulation of workplace violence in the Labor Standard Act, which is now forbidding only violence committed by an employer, into the

direction of expanding and intensifying up to 'worker' and 'workplace bullying', and newly establishing a clause of punishing through aggravating 50%p compared to general workplace violence as for a person who committed a workplace violence offence who used a dominant position.

This study remained in a theoretical research of arranging the recent research trends and implications in foreign countries based on documents on workplace violence, and of suggesting a legislative alternative along with own concept definition in the dimension of urging an interest of the domestic crime academy and the authorities. Follow-up researches are expected to be conducted actively that grasp influential factors of workplace violence henceforth through empirical verification and analysis based on a concept of workplace violence, which was suggested in this study, and that present a specific policy-based alternative plan related to each of the factors.

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직장폭력의 개념 재정립과 입법적 개선방안에 대한 소고(小考)

국문초록 최근 한국에서 직장폭력에 대한 관심이 뜨겁다. 직장폭력의 사회적 심각성과 부작용이 강하게 대두되면서 서구 국가에서는 직장폭력의 개념 정의와 관련된 다양한 논의들이 이루어지고 있다. 직장폭력과 관련하여 가장 치열한 공방이 이루어지는 쟁점은 직장폭력의 범위를 물리적 폭력에 한정할 것인지 아니면 언어적 폭력과 심리적 폭력까지 포함할 것인지를 문제이다. 이 문제는 직장내 괴롭힘과 직장폭력과의 관계 설정과도 직결된다. 한편 프랑스를 비롯하여 영국, 스웨덴, 미국, 캐나다, 일본 등 소위 선진국들은 직장폭력의 심각성에 대한 인식 하에 직장폭력을 규제하고 피해자를 보호하기 위해 입법적인 노력과 정책개발에 힘쓰고 있다. 반면 한국은 아직 직장폭력을 예방하기 위한 국가차원의 관심이나 노력이 비교적 저조한 실정이다. 이에 이 연구에서는 우선 직장폭력의 개념을 형사규범적인 관점에서 한국의 실정에 맞게 재정립하고 이를 기초로 하여 우월한 지위를 남용한 직장폭력 범죄에 대한 별도의 가중처벌 조항 신설 등 입법적 개선방안을 제시하였다.

주제어 : 직장폭력, 직장내 괴롭힘, 입법적 개선, 우월적 지위 남용, 가중처벌

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