

# A Gender-Sensitive Analysis of Precedents related to Violence against Women<sup>1</sup>

Deuk-kyoung Yoon<sup>2</sup>

Bok-soon Park<sup>3</sup>

Eui-jeong Hwang<sup>4</sup>

Cha-yeon Kim<sup>5</sup>

## Abstract

A gender-sensitive analysis of precedents related to violence against women is expected to resolve male-centered social norms while addressing the power imbalance between men and women, thus setting a direction for a more balanced life for men and women. It should also contribute to ensuring the human rights of women, who constitute the majority of violence victims, as well as to actualize the vision of Article 10 of the Korean Constitution: “All citizens shall be assured of human worth and dignity.” With the progress in laws relating to women and the family, a number of precedents dealing with violence against women have been accumulated. However, there has yet to be a quantitative study analyzing these precedents in earnest, let alone one providing suggestions for improvement. In this study, a gender-sensitive approach will be applied in order to analyze precedents concerning violence against women, particularly sexual and domestic violence, and to propose a number of legislative tasks. This study addresses the history of laws related to violence against women, changes in the way these laws have been applied, a gender-sensitive analysis of precedents concerning sexual and domestic violence, and suggestions for legislative tasks. Several methods were employed in the study, including a literature review, collection and analysis of precedents relating to sexual and domestic violence, workshops on the respective topics of precedents relating to violence against women, and expert meetings seeking advisement. Regarding precedents for sexual violence, 705 cases of rape

---

<sup>1</sup> This article summarizes a KWDI research report (Deuk-kyoung Yoon et al., 2014).

<sup>2</sup> Research Fellow, Korean Women’s Development Institute

<sup>3</sup> Research Fellow, Korean Women’s Development Institute

<sup>4</sup> Researcher, Korean Women’s Development Institute

<sup>5</sup> Attorney at Law, Dongcheon Foundation

and forced indecent acts brought to courts of third instance between 2000 and 2013 were analyzed. For precedents regarding domestic violence, 56 family protection cases focusing on violence, injuries and assaults by spouses and 582 additional criminal cases were analyzed from a gender-sensitive perspective. From a gender-sensitive perspective, legislative tasks proposed based on the sexual violence precedents include the prescription of all acts of non-consensual sexual contact, even in the absence of manifest physical resistance, and the refinement of sexual violence laws. Legislative tasks proposed based on domestic violence precedents include a change in the legislative paradigm for laws addressing special cases of domestic violence and actualization of punishment levied on domestic violence crimes. Other suggestions include expanding awareness of gender sensitivity and human rights sensitivity among law enforcement officials.

**Key words:** Precedents related to violence against women, gender-sensitive analysis, rape, assault or threat, credibility of statement, domestic violence

## Introduction

In order to resolve male-oriented social conventions and ensure the human rights of sexual violence victims, gender-sensitive analysis is required. A large volume of cases of violence against women have been accumulated to date, but quantitative and qualitative analysis of those cases has lagged. This study attempts to suggest legislative tasks to improve case laws through gender-sensitive analysis focused on sexual and domestic violence, as well as improvement tasks for refining legal interpretations and legal system operations.

This study implemented a gender-sensitive analysis of cases of sexual and domestic violence. The case analysis on sexual violence included 705 cases, such as of rape and forced indecent acts, which went through the final court (Drei-Instanzen-System) between 2000 and 2013. The cases were studied in terms of perpetrators, victims, crimes, and court rulings, especially those specific cases including problems from a gender-sensitive perspective regarding the determination of punishment and constitution of a crime. The case analysis on domestic violence included 56 family protection cases provided by the Seoul Family Court and concluded since the second half of 2013. These are mainly typical family violence types, such as spousal abuse, and typical physical violence types, such as bodily injury and assault. In addition, 582 cases from criminal trials were included. These were studied in order to better illuminate the actual situation of family violence and analyze problems in the legal interpretation and prosecution process.

## Study Methods

A variety of study methods were utilized, including document research, case collection and analysis, workshops on different subjects recurring in multiple cases related to violence

against women, and expert consultation conferences. As for the collection and analysis of sexual violence cases, 705 cases of rapes and indecent acts by force which underwent final trials between 2000 and 2013 were analyzed. As for family violence cases, 582 cases of criminal trials and 56 family protection cases focusing on spousal abuse, bodily injury and assault were analyzed from a gender-sensitive perspective. As for workshops on violence against women, the chosen topic was ‘What is a gender-sensitive perspective on the cases of sexual violence and family violence?’ Expert consulting conferences were conducted through meetings or written consultation on research direction, research contents, acquiring rulings on protection disposition and more.

## Gender-Sensitive Analysis on Cases of Sexual Violence

### *Analysis on the Range of Cases of Sexual Violence*

The analysis of the range of cases of sexual violence focuses on rapes and indecent acts by force, using cases from the year 2000 (1/1/2000-1/31/2001) and from 2013 (1/1/2013-2/28/2014), and on cases heard by the final court.

Table 1. Current Status of Analyzed Rulings on Cases of Sexual Violence

(Unit: case)

Classification		Via the Supreme Court Search List	Obtained	Analyzed
Rape	2000	182	97	86
	2013	496	474	385
	Subtotal	678	571	471
Indecent acts by force	2000	21	11	21
	2013	147	133	213
	Subtotal	168	144	234
Total		846	715	705

### *The Characteristics of Sexual Criminals*

As for the number of perpetrators in terms of commissions of a crime, the proportion of rapes committed by a single perpetrator increased from 84.9% in 2000 to 94.5% in 2013. Indecent acts by force committed by a single perpetrator increased from 90.5% in 2000 to 99.1% in 2013. The rate of crimes committed by a single individual increased rose compared with that of cases involving accomplices. As for the gender of perpetrators, men account for 99.9% of the 705 cases studied, and women account for just 0.1%. The proportion of men makes up an overwhelming majority.

The ages of perpetrators range from their twenties to forties. When we examine types of crime in terms of different ages, rape cases in the year 2000 are high among those in their twenties and thirties. In 2013, however, rape cases became more frequent among those in thirties than those in their twenties, thereby indicating an increase in overall perpetrator age.

As for the perpetrator's relationship with the victim, the proportion of those who were familiar with their attackers is slightly higher compared to those attacked by a stranger. In 2000, sex crimes by perpetrators completely unknown to their victims were high, but recently, sex crimes against victims known to their attackers has been increasing.

As for criminal records, perpetrators with no such record account for 57.2%, while perpetrators with a criminal record account for 42.8%. Comparing 2000 and 2013, the number of perpetrators who had a different kind of previous conviction decreased compared with the number of perpetrators who had committed the same kind of crime. Therefore, efforts to prevent recidivism are necessary.

#### *The Characteristics of Sexual Violence Victims*

Ninety-four percent of cases involve a single victim. If we look into this by crime type, in the case of rapes, single-victim cases increased in 2013 compared with in 2000. In the case of indecent acts by force, the proportion of one-victim cases decreased, while those against multiple victims increased.

As for the gender of victims, 98.9% are women in their teens, twenties and thirties. In cases of both rapes and indecent acts by force, the rate of teenage victims increased. It is noteworthy that victims in their teens and under increased, making it necessary to pursue measures to prevent such crimes by reflecting this reality.

As for victims' injuries, 78.4% of the cases show no physical injuries to the victims in the sentencing, and only 21.6% of the cases involve physical injury. Related psychological injuries include depression, post-traumatic stress disorder, and sleeping disorders, all of which result in serious psychological pain.

#### *The Characteristics of Sex Crimes*

Twenty-three point two percent of the criminals involved used violence, 16.3% used threats, and 12.3% used deception and authority.

If we look into the changes of criminal means in terms of types of crime, compared with the cases in 2000, the cases in 2013 show an increase in the use of deception and authority, victims' mental disorder, and crimes while victims were sleeping or in a drunken condition. In the case of indecent acts by force, in addition to such methods, the utilization of games, affection and praise increased.

#### *Rulings*

As for multiple offenses and the related types, 395 cases, accounting for 56.0% of total cases, involved multiple offenses. Among these, 59.7% are the same type of crime. Including rapes and indecent acts by force, similar types of multiple offenses have increased

recently compared with in the year 2000.

The sentences issued by each court show that as the cases progress, the prison sentences and monetary penalty decrease and acquittals and suspended sentences increase. In addition, the rate of remand after reversal from the Korean Supreme Court to the first trial court accounts for 2.3% of the total.

The reasons for the reductions in the determination of punishment in rape cases in the year 2000 include the accused showing remorse (26.3%), the age of the accused (13.2%), and settlements made with victims (10.5%). In 2013, they include the accused having no previous record (15.2%), the accused showing remorse (14.5%), no records of similar crimes (12.7%), and settlements made with victims (12.7%).

In the case of indecent acts by force, the reasons for reducing the determination of punishment include settlements with the victims, no records, and no similar records with essentially the same proportion (25.3%) in 2000. However, in 2013 the most common reason for lightening sentences was 'no record' (25.3%). The next is the level of material power not being great (13.5%), and other factors that were considered include 'remorse on the part of the accused' (11.8%), and 'settlement with the victim' (9.7%).

#### *Average Sentences*

In the case of rape excluding multiple offenses, when we examine the single crimes in terms of charge, court level, and chronology to ascertain the average sentence levied, the average sentence in the year 2000 is higher than that for 2013, and the average sentence from the Korean Supreme Court is lower than those issued in the first trial court overall.

The sentence for most sexual violence crimes at the first trial is less than the minimum legal penalty. This indicates that raising the legal penalty does not influence the sentence.

Crimes where the legal penalties had not been strengthened tended to receive stricter sentences in 2013 compared with those in 2000. This means that the courts recognize the gravity of sexual violence crimes, and it can also be inferred that the implementation of sex crime sentence standards has contributed to stricter sentences.

Comparing the average sentence for rape in terms of the perpetrator's relationship with the victim, the average sentence in crimes against family members and other relatives in 2013 is higher than those from 2000. Both in 2000 and 2013, the average sentence for crimes against lovers or friends of the opposite sex proves relatively lower than sentences for other relations in sex crimes. This means that in the case of sex crimes against intimates, greater difficulties are experienced in establishing sexual violence.

In the crime of rape, when we compare the average sentence for a rapist who was under the influence of alcohol, the discrepancy between those who had been drinking and not drinking was not particularly great in 2000, and in fact the sentence for drinkers was slightly higher. In 2013, however, the average sentence between alcohol-involved and alcohol-free rapes shows a considerable distinction. In the case of drunken rapists, the average sentence is lower than the overall average sentence. The possibility of mitigation for those under the influence of alcohol cannot be ruled out.

As for drinking on the part of the victim, the average sentence in 2000 shows that the sentence in cases involving a drinking victim was higher than that for non-drinking victims. This indicates that no influence on the sentence can be found. However, in the cases from 2013, the average sentence meted out in cases with drunken victims proves slightly lower than that of cases involving no drinking by victims. Therefore, we can surmise that drinking by victims could be considered to reduce the responsibility of perpetrators.

#### *Appeals and Final Appeals and the Results*

As for appeals in terms of the initiators, the accused account for 64.0% of the total, 28.09% were appealed by both parties, and 7.1% of total cases were appealed by prosecutors.

The contents of the appeals are as follows: unfair determination of punishment claimed by the accused (80.1%), unfair determination of punishment claimed by prosecutors (76.4%), factual errors and misinterpretation of legal principles claimed by the accused (68.1%), factual errors and misinterpretation of legal principles claimed by prosecutors (31.1%).

As for the final appeals in terms of the initiator of the appeal, the accused account for 88.9% of the total, prosecutors account for 9.8%, and both parties account for just 1.3%. Dismissed cases make up 97.3% and remand and reversal cases account for 2.7%.

## **Content Analysis on Sex Offense Related Cases**

#### *Reviews on Violence or Threats*

To determine whether ‘violence or threats’ are relevant to the crime of rape, many suggest that some neutral judgement standards are required based on the victims’ experiences and perspectives.

Therefore the Supreme Court ruled that in order to judge whether ‘violence or threats’ are relevant to a crime of rape, all of the factors including the content and extent of the violence and threats, the details on material power, the relationship with the victim, the circumstances of intercourse and the situation after intercourse should be considered based on “the victim’s detailed situation at the time of intercourse.” Therefore the court should not conclude that the perpetrator's violence and threats did not preclude resistance simply because the victim was capable of leaving the crime scene or did not resist with all her power. This is a positive change.

#### *Reviews on the Credibility of Victims’ Statements*

In sexual violence crimes, there are many cases in which the credibility of the victim's statement is the sole evidence. However, the judgement standards for the credibility of a victim's statement are highly abstract, so in actual applications the judge's understanding of the characteristics of a sexual violence victim's statement influences the court's results in many ways.

As for the trend in sentencing, in the past if a statement showed minor inconsistencies,

acquittals were more often meted out. In addition, there were many cases that did not take into consideration the characteristics of victims or the context of damage from sexual violence. However, recently a number of more rational judges have emerged, so that even if some minor points are inconsistent, in some cases the court has recognized the credibility of a victim's statement with consideration for the characteristics of sex crimes.

There are some cases in which a victim's statement is ruled out simply because the statement regarding the order of sexual violence acts was insufficiently consistent. In particular, one ruling denied the credibility of a victim's statement on the grounds of the victim's previous experience as a prostitute.

#### *Reviews on Determination of Punishment*

If the accused is a first-time offender or does not have a record of similar crimes, it influences the decision on sentence reduction or probation. However, it is unfair to reduce a sentence simply because the accused is a first-time offender or lacks a record of any similar crimes. As for a settlement or the victim's desire not to punish the accused, this is not some type of property crime that can be negated through remuneration, so this does not provide assistance to the victims but affects them negatively, including through secondary damage. So, even if a settlement with victims may be reflected in a sentence, it should not play a major role in reducing a sentence.

Normally, rape by a family member is a weighted factor in sentencing, but there were some cases in which the accused's sentence was reduced because he was needed to provide support for the victim. Considering the accused's providing for a victim as a favorable factor in sentencing is a contradiction in sexual violence crimes.

As for the relationship between the accused and the victim, the rate of crimes by acquaintances is the highest, and normally the period of violence is long and tends to be repeated. In such cases, the level of damage is severe compared with that to victims of strangers, especially considering the fact that the accused betrayed the trust of victim. Therefore, if the relation between the accused and victim has to be considered as a factor in determining sentences, the details of the relationships which are applied to the process of sex crimes and the degree of damage to the victim should be identified.

As for the accused showing remorse, in most cases the perpetrators state their regret, but it is difficult to find examples of how the court can judge whether a perpetrator's regret is sincere. If the accused shows remorse, it has to be reflected by reducing the sentence, so the court is required to ascertain whether the accused admitted his crime and how he expressed his regret or feelings of guilt.

#### *Subconclusion*

Since the number of mentally disabled victims of sex-related cases is increasing, there is a need to focus on the prevention of sex crimes against victims who are especially vulnerable to such crimes, including the borderline disabled.

Specific measures to prevent special robbery and rape crimes, involving breaking into a house and committing sex crimes at the same time, should be provided. Also, victims

suffering mental damage as a result of sex crimes are increasing, so special measures are required.

Looking at the average sentence levied at the first trial involving rapes, the sentences in rape and murder cases, rape by family members, and rape crimes against children less than 13 year olds, those from 2013 are all longer compared with those from 2000. However, there remains a problem with sentences below the minimum prescribed sentences.

The violence and threats involved in rape crimes should be judged from the perspective of victims, and the credibility of statements should be considered based on the victim's position. To prevent the contamination of a victim's statement or lapses in memory, it is necessary to make evidential data out of the victim's initial statement.

It is also necessary to discuss the issue of including the accused's remorse or the victim's wish for forgiveness or the provision of family support among reduction factors. These are included in the sentencing standards for sex crimes, but it is necessary to exclude them from consideration in the case of sex crimes. These factors can be applied to other crimes, but the special nature of sex crimes should be taken precedence.

## **Gender-sensitive Analysis on Domestic Violence Cases**

A small part of domestic violence cases, those which were processed as criminal cases and some which were dispatched as home protection cases, were selected as subjects for analysis. Since 2008, data on home protection cases have supposed to be closed, so there are some issues in accessing these records. However, in cooperation with the Seoul Family Court, we were able to access 56 cases. We analyzed the contents of these home protection decisions and 582 cases of domestic violence processed by the criminal courts.

Considering this study's objective, a gender-sensitive analysis of domestic violence, we limited the analysis targets to cases involving spouses. Among these violent crimes, we focused on those involving physical violence, such as injury and assault.

### *Analysis of Home Protection Cases from the Seoul Family Court*

The rulings analyzed stem from 58 cases occurring between July 25, 2013 and February 5, 2014. Among these rulings, five cases were excluded for being child abuse cases without any relation to spousal abuse. Three cases were mutual assaults or injuries, so 56 cases in total were analyzed.

By gender the accused comprise 53 men and three women, so male is the majority gender. It can be seen that domestic violence is being used by men as a means of controlling women.

As for the relation between these men and women, 42 cases involved legal couples in which the husband was the accused. In eight cases the accused were cohabiting males. Two cases involved accused who were ex-husbands reunited or simply cohabiting with their ex-wives. In one case the accused was a divorced husband.

The types of domestic violence include 32 cases of assault, 20 cases of injury, and one

case of special intimidation. Among these, one case of assault and five cases of injury featured additional punishment factors due to the use of a deadly weapon.

As for the recognition of domestic violence crimes, most cases were reported to the 112 police emergency hotline and the police dispatched to the scene recognized the crimes as urgent situations, except in the case of couples who voluntarily appeared at a police station to be investigated mutually, and some victims who entered complaints after the crime had been committed.

As for utilizing emergency measures, they were quickly and actively implemented upon the discretion of the victims. Cases in which emergency measures were implemented increased from 119 cases in 2012 to 1002 in 2013. This indicates a steep, nearly ten-fold increase. However, the punitive measures against violations of such orders are insufficient, so the effectiveness of these emergency measures is in question.

In the process of handling cases, many assault cases were not indicted (no right of arraignment) because the accused could not be punished against the victim's explicit intentions. However, the police often continue to respect the intention of victims even in some cases where there is no such requirement.

In addition, where there is a strong possibility of repeated crimes, emergency measures should be implemented and certain temporary measures need to be taken to protect the victim. However, this process has to be conducted in accordance with the will of the victims. The Special Act for the Punishment of Domestic Violence clearly stipulates the power of a judicial police officer to implement emergency measures, but in practice police officers rarely utilize this power.

In the process of handling a case, prosecutors have to consider the victim's intention toward punishment, the level of damage, and the victim's current condition (Guidelines, Article 10). Also, he or she has to utilize interviews and communication systems such as the telephone in order to determine the victim's intention toward punishment and her intention to remain in her home or seek protection measures or support. However, case records show that most prosecutors simply check these issues by telephone rather than using the interview system. Also, many victims, including some who expressed a strong desire for punishment for the accused at the police station, often change their minds.

As for managing home protection cases, the court proceeds with a separate investigation apart from the investigation by the police and prosecutors. When a judge in charge considers protective disposition to be needed, the following can be ordered: limiting the access of the accused to the victim or other family members; limiting the access of the accused to the victim or other family members to telecommunication (The Telecommunications Basic Act article 2, No. 1); ordering community service or community service according to the probation laws; probation according to the probation laws; placement in trust for custody according to the laws of domestic violence prevention and protection of victims; custodial treatment in a medical facility; and counseling trust in a counseling center.

Looking at the analyzed cases, probation was determined by considering the investigators' opinion after the investigation prior to determination. Of the 56 probation cases, counseling

trust was the most common (16 cases: 28.6%), followed by ordering community service (12 cases: 21.4%), and probation (10 cases: 17.9%).

Table 2. The results of protective disposition by the Seoul Family Court

(Unit: case, %)

Classification	Frequency	Component ratio
No disposition	2	3.6
Probation	10	17.9
Counseling trust	16	28.6
Ordering community service	12	21.4
Treatment custody	1	1.7
Counseling trust+probation	4	7.1
Ordering community service+probation	5	8.9
Treatment custody+probation	2	3.6
Probation+100 meter access limit	2	3.6
Mixed composition <sup>a</sup>	2	3.6
Total	56	100.0

Note: <sup>a</sup>(Ordering community service+probation)+(100 meter access limit+probation)

## Analysis on Domestic Violence Criminal Trials

### *Rulings on Analyzed Subjects*

The rulings on analyzed subjects amounted to 582. Among these rulings, injury cases made up 499, accounting for 85.7%, while assault cases totaled 83, accounting for 14.3%.

Table 3. The composition of analyzed cases: Criminal cases of domestic violence

[Unit: case (%)]

Classification	Injury	Assault	Total
Frequency (component proportion)	499 (85.7)	83 (14.3)	582 (100.0)

When we look into the distribution of rulings according to each period based on the first trial date, 34.2% fall between 2009 and 2011 and 33.0% are between 2012 and 2014. The cases that were terminated at the first trial number 440, which accounts for 75.6% of the total. The cases that were terminated at the second instance total 137, which accounts for 23.5%. Just five cases went as far as the final court of appeal.

Of the 142 cases that passed through the appeal courts, the accused in 119 of the cases, including cases in which both parties (the accused and victim) appealed the decision of courts. Just 43 cases were appealed by prosecutors. So, in a great number of cases, the accused appealed against the decision passed down in the first trial.

#### *Analysis on the Accused and Victims*

Of the 582 cases analyzed, women were reported to be or charged as the attackers in just 15 cases (2.6%). The perpetrators in the remaining cases (567 cases; 97.4%) are men. When we look into the relationship between the accused and victims in domestic violence criminal cases, 512 cases (88.0%) involved spouses or ex-spouses. For cases that took place between cohabitating persons or formerly cohabitating persons, there are 49 (8.4%) in total.

The Act on Special Cases Concerning the Punishment, etc. of Crimes of Domestic Violence (from hereon called the “Special Act for the Punishment of Domestic Violence”) states that a spouse means a person legally married to the other person. However, cohabitating relations are also being handled as domestic violence cases. Non-cohabitating lovers and people involved in extramarital affairs are not included in this protection, but we included them in this analysis in order to ascertain the trend of violence in intimate relationships. There were 13 such cases (2.2%) in total.

#### *Analysis on Criminal Facts in Rulings*

Among spousal violence cases handled in the criminal courts, when we combine all the results of appeal and final appeal, in 424 cases (72.9%) prison sentences were meted out. Next most frequent was the imposition of monetary penalties (84 cases; 14.4%). Decisions for home protection numbered 70 cases (12.0%). A verdict of acquittal was issued in four cases (0.7%).

When we look at the relation of the accused and victim at the time of final sentencing, if the relationship was still maintained, the cases were determined as home protection cases, and even when the verdict was a prison sentence, probation tended to be assigned with some terms of obedience. However, if the relations between the accused and victim had been terminated or were believed to have been terminated, even if the verdict was a prison sentence, there were no special terms of obedience for probation.

#### *Subconclusion*

The overall prosecution process based on the Special Act for the Punishment of Domestic Violence is excessively focused on home protection. Additionally, it seems that the expressed desires of the victim are respected in the overall prosecution process. Although respecting the victim’s intention is not inherently wrong, if we consider the characteristics

of domestic violence and especially the characteristics of its victims, problems with conceding to the victim's intention can be found. In other words, the victim cannot be considered free from the influence of the perpetrator due to the circumstances involved, which makes it difficult for the victim to express her true intentions. Sometimes, the intention of the perpetrator stands in for the victim's opinion, leading to an odd result in which the perpetrator is allowed to determine the process.

Violence against a spouse should be recognized as a crime that violates the human rights of women. Legal revision giving priority to the protection of victims and the human rights of family members without focusing on 'home protection' should be pursued. At the same time, education for building awareness toward changing the related legal operations is needed.

## Policy Suggestions

### *Legislative Tasks for Sexual Violence*

A new kind of crime which objectifies a person, adultery by power, should be included among sex crimes. Ways to legislate this should be researched by revising rape articles. In addition, in order to avoid a vacuum in punishing rape crimes, it's necessary to implement a non-consensual adultery crime.

### *Tasks on Changing the Legal Interpretation of Sexual Violence*

To resolve this failure in punishment, it is necessary to expand the defined levels of violence and threats. In addition, it is necessary to include the requirement of simply 'reasonable resistance', as in the judicial precedent of the United States.

The court should recognize the high credibility of the first statement made by children and juvenile victims. As for the sentences in sex crimes against children and youths, any expression of not seeking punishment should be excluded from allowable reduction factors.

If remorse shown by the accused is to be allowed as a reduction factor, it should be considered only after ascertaining whether the accused admitted to his crime, expressed regret or feelings of guilt, or attempted to justify his crime.

If the victim of rape is suffering from psychological trauma (post-traumatic stress disorder, etc.), the court must recognize these as injuries stemming from rape. Ways to judge the likelihood of repetition of crimes should be introduced, and expert standards should be prepared based on the special character of sex crimes.

### *Tasks for Improving Legal Operations*

As for sentencing, it is better to establish appropriate sentencing standards by reflecting the positions of victims, investigating authorities, women's organizations, and civil organizations, rather than simply following conventional practices.

Coupled with establishing reasonable sentencing standards, criteria for evaluating the

fairness of a sentence which examines its rationality and proportionality are required.

Socially, it is necessary to monitor cases once they have passed outside of the court, so that sentencing standards can have their roots in practice. Also, the provision of legal representation for victims, which was introduced recently to prevent secondary harm to victims in the trial process, should be actively utilized.

#### *Legislative Tasks for Improving Domestic Violence*

To convert the legislative paradigm for domestic violence from home protection to victim protection, domestic violence should be handled as any other criminal case, rather than the current practice of considering it a home protection case. To strengthen the protection of victims, the existing Special Act for the Punishment of Domestic Violence should be revised.

To overcome the reality in which domestic violence cases are handled as less serious crimes than ordinary criminal cases, domestic violence should be punished more severely than ordinary criminal cases. At present, all the legal processes in the Special Act for the Punishment of Domestic Violence tend to follow the intention of victims. This should be complemented by the procedures to more fully determine their true intention.

#### *Tasks for Changing the Legal Interpretation of Domestic Violence*

When violence against a spouse is handled as a home protection or a criminal case, the relationship at the time influences the final sentence. The sentence should in fact be determined by the level of violence, not the relationship. Also, to improve the recognition of the special nature of domestic violence by the judge in charge, some limits about the generous interpretation of crimes associated with alcohol intoxication are required.

#### *Tasks on Improving Legal Operations*

The most important standards that affect the results of cases are the victim's intention of whether or not to punish the accused and the victim's intention to maintain her household. Therefore, the most urgent issue is establishing standards for case processing that protect victims and family members from the accused.

Notifying victims of their rights should be understood not to be a mere formality, and written notice with sufficient oral explanation should be provided.

#### *Fostering a Gender-sensitive Perspective and Human Rights Sentiments among Legal Executors*

Expert human resources able to recognize the special nature of sexual and domestic violence and adroitly manage such cases should be secured.

At present, police and prosecutors are making efforts to provide such expertise by assigning police officers respectively in charge of sexual and domestic violence and assigning prosecutors in charge of these matters. However, they are in short on expert staffing, and also lack certified human resources. Therefore, continuous education needs to be carried out among those taking charge of sexual and domestic violence.

## References

- Chang, Da-hye (2014). Legal discourse on sexual violence: Workshop presentation material by the Korean Women's Development Institute for reasonable legal interpretation and resolving these issues by legislation.
- Jeong, Choon-sook (2012). "Revised laws on domestic violence punishment - Need for change in coping with domestic crimes" Discussion papers, Special Act for the Punishment of Domestic Violence. Sourcebook of public hearing, 9/14/2012
- Kim, Jeong-hye (2013). Evaluation of Revised Laws on Sexual Violence Victims' Rights, 2013 Korean Counseling Center's Conference of Sexual Violence, 1122 Revision of the Sexual Violence Law-The Outcome and Tasks - Considering the future of anti-sexual violence, 2/20/2013. Sourcebook.
- Ko, Mi-kyung and Huh, Min-sook (2012). "Murder and Gender", Discussions on Rulings on Domestic Violence Attacker's Death and Murder by the Victim, Korea Women's Hotline.
- Korean Women's Bar Association (2014). Case analysis forum on rulings on sexual crimes against children and youths- 6/19/2013 After the revision of sexual violence laws-Sourcebook (8/26/2014).
- Lee, Mi-kyung (2013). "The history and tasks of abolishing the article on an offence subject to complaint in sexual crimes," 2013 Korean Counseling Center's Conference on Sexual Violence, 1122 Revision of the Sexual Violence Law - The Outcome and Tasks - Considering the future of anti- sexual violence, 2/20/2013. Sourcebook.
- Park, So-hyun (2013). Study on the improvement of the legal system through analysis of the patriarchal aspects of domestic violence (Doctorate thesis at Ewha Women's University).