

A Study on Legal System Improvements for the Comprehensive Protection and Support of Victims of Violence Against Women¹

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Abstract

The purpose of this study is to suggest a framework act (bill) on the prevention of violence against women based on an examination of relevant laws, legislative examples from other nations, and expert opinions, with a view to converting the current legal system in which the relevant laws on violence against women: the acts on the protection of victims of domestic violence, the protection of victims of sexual violence, and the protection of victims of sexual trafficking, are operated independently into a system with a framework act related to violence against women.

The contents of the study include the examination of the concept of violence against women, including the South Korean laws and policies relevant to protection and support of female victims of violence, and an analysis of legislative examples from the United Kingdom and the US. Based on the results of the study, measures on legislative adjustment were suggested through interviews with experts and a Delphi survey.

The research methods employed include the review of related literature, an examination of legislative examples from foreign nations, a conference of experts, and a Delphi survey.

Basic aims for legislative adjustment were set as follows: establishing a rational

¹ This article summarizes a KWDI English research report (Deuk-kyoung Yoon et al., 2016).

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complementation among the policies concerning the protection and support of female victims of violence, which has become necessary due to a legislative shift from a policy for women to a policy pursuing gender equality, resolving disagreements between legislation and policies as they are enforced, integrating the laws and regulations within individual acts providing similar services, and introducing new institutions required in order to protect and support female victims of violence. Finally, a framework act (bill) on the prevention of violence against women reflecting the above-mentioned contents was suggested.

Key Words: domestic violence, sexual violence, sex trafficking, prevention and protection of violence against women, act related to violence against women

Introduction

The Korean government has set the elimination of four major social evils as part of its national agenda, including sexual and domestic violence. Sexual and domestic violence can be controlled in the following two contexts: 1) offender punishment and 2) victim protection. This paper is designed to focus on the latter.

Domestic/sexual violence and sex trafficking and the relevant victims have been controlled and protected, respectively, via individual laws which have proven effective to a certain degree in preventing such violence. However, the individually segmented system is deemed to have certain limitations in achieving a higher-level goal of protecting and supporting victims of violence against women (VAW).

Against this backdrop, this study is designed to review whether individual laws for protecting and supporting victims of domestic/sexual violence and sex trafficking should be integrated into a comprehensive VAW law; analyze related laws, policies, and foreign legislation; and gather expert opinions for the crafting of an inclusive VAW legal framework. Based on the preceding, it aims to present ‘the Framework Act on the Prevention of Violence Against Women’ (tentative title).

Moreover, by seeking ways to establish an alternative legal system allowing such integration, we would like to contribute to creating synergy in enforcement policies for protecting and supporting VAW victims.

Study Methods

In order to present a legal-system improvement plan for the comprehensive operation of the protection of and support for VAW victim, we reviewed the concepts involved in VAW, laws and policies for the protection and support of VAW victims, and VAW-related laws and policies in the UK and USA, and carried out in-depth interviews with VAW experts.

When reviewing the concepts of VAW and analyzing laws and policies for the protection and support of VAW victims, the features of the laws and policies, and areas for improvement were examined via a literature search. Next, overseas legislation was studied and analyzed to identify policy implications for the Korean legal system. In addition focus group interviews (FGIs) with experts who have actively conducted campaigns against sex trafficking and facility operators who have supported victims at VAW counseling centers and shelters were performed in order to collect opinions on difficulties in using and understanding VAW-related legal terms. These interviews also addressed the individually segmented VAW laws and the needs for their integration.

Review of Concepts of Violence Against Women

International Standards

The World Conference on Human Rights held in Vienna in June 1993 (Vienna Declaration and Programme of Actions) provided an important opportunity to fundamentally recognize VAW as a grave infringement on women's rights, and also as both a source and result of discrimination against women (Kim El-rim, et al., 1999:5). The Declaration on Violence Against Women, which was adopted in the UN General Assembly on December 12, 1993, defined VAW as gender-based violence. This Declaration, the first international document to define VAW as gender-based violence, played a pivotal role in positioning VAW as part of the global agenda in the 1990s.

Legislation-Related Discussions

The concept of sexual violence was introduced through the initiative of the women's movement since 1987. It was chosen in Korea as an official legal term pursuant to the 1994 Act on the Punishment of Sexual Crimes and the Protection, etc. of Victims Thereof (hereinafter, the Special Act on Sexual Violence). More specifically, it is classified into the following two concepts: 1) VAW and 2) sexual violence.

Those who focus on the former believe that it refers to a variety of forms of sexual violence stemming from the imbalance in physical power between men and women, such as rape, indecent assault, wife battery, uxoricide, human trafficking, sex trafficking, and pornography. On the other hand, those who prefer the latter term consider it to be limited to narrower forms of sexual violence, such as rape and indecent assault.

The two concepts of sexual violence have been discussed over a considerable period of time, but the latter was chosen for legislation. As a result, the narrower concept of sexual violence was used for the Special Act on Sexual Violence, leading to the enactment of two separate laws, one on sexual violence and one on domestic violence. However, the former definition is deemed to be highly meaningful, even though it was not reflected in the Special Act on Sexual Violence.

Laws for the Protection and Support of Victims of Violence Against Women

Similarities in Content Among the Three Related Laws

The Act on the Prevention of Domestic Violence and Protection etc. of Victims Thereof (hereinafter, the Act on the Prevention of Domestic Violence), the Act on the Prevention of Sexual Assault and Protection, etc. of Victims Thereof (hereinafter, the Act on the Prevention of Sexual Assault), and the Act on the Prevention of Sex Trafficking and Protection, etc. of Victims Thereof (hereinafter, the Act on the Prevention of Sex Trafficking) include both similarities and discrepancies in terms of structure. The three laws are deemed to be similar in the context of their general structure. However, only the Act on the Prevention of Sexual Assault features separate chapters and clauses, and it is difficult to consider specific and substantial regulations have been placed in the same locations in the three laws. Therefore, when drafting basic or comprehensive bills, it is necessary to review whether they should be divided into chapters and clauses. Considering relatively recent cases of legislation, it is certainly possible to adopt a common structure. In accordance with the analysis of similarities in content among the three laws, it can be tentatively concluded that they have significant similarities and differences. They resemble one another in terms of objectives, definitions, and the responsibilities and duties of the government prescribed in the general provisions. For specific rules and regulations, they are deemed to be similar in the following areas: 1) Prevention policies: surveys, prevention training, promotional videos, and a violence elimination week; 2) Protection/support policies: counseling centers, protection/support facilities, the respect of victims' opinions, schooling support, financial support for healthcare, regular supplemental training, cooperation from law enforcement agencies, and confidentiality; 3) Administration and supervision: the closure, supervision, assessment, and decertification of facilities, as well as the prevention of the operation of for-profit organizations. In the areas of financial assistance and the delegation of authority in supplementary provisions, as well as penalties, dual liability, and fines in penal provisions, they are considered to be similar.

The three laws contain different rules and regulations that can be applied comprehensively and are set forth based on the characteristics of VAW. Therefore, when discussing integration among the three laws, they should be carefully reviewed.

Differences in Contents of the Three Related Laws

Here, differences in the contents of the three laws will be discussed. Each law features the following unique regulations: 1) The Act on the Prevention of Domestic Violence: the prohibition of imposing unfavorable measures on victims, the provision of rental housing, the establishment and operation of counseling centers, emergency call centers, training facilities, and hearings; 2) The Act on the Prevention of Sexual Violence: the operation of prevention training support institutions, general support centers, legal counseling, the duty of reporting, counselor qualifications, counselor training facilities, corrective orders,

sexual violence care hospitals, and hearings; and 3) The Act on the Protection of Victims of Sex Trafficking: the installation, operation, and management of self-support facilitation centers, the operation of support facilities, the installation of the center for the prevention of sex trafficking, the designation of hospitals dedicated to sex trafficking issues, the posting of counseling center information, the definition of the duties of information and communication service providers and online service providers, and special cases concerning the use of names.

On the other hand, there are rules and regulations that two of the laws share in common. The Act on the Prevention of Domestic Violence and the Act on the Prevention of Sexual Violence feature the following regulations in common: a prohibition on imposing unfavorable measures on victims, counselor training facilities, staff qualifications, hearings, and the prohibition of using similar names. A regulation on designating VAW care hospitals is found both in the Act on the Prevention of Sexual Violence and the Act on the Protection of Victims of Sex Trafficking.

Policies for the Protection and Support of Victims of Violence Against Women

Policies for protecting and supporting VAW victims have been carried out in a gender-neutral manner, focusing on domestic violence, sexual violence, and sex trafficking. However, in practice, the policy focus has been placed on female victims. This relates closely to the fact that a number of policies have been devised to support female victims via ‘the Basic Plan for Women’s Policies’ crafted by the Ministry of Gender Equality and Family.

Against this backdrop, a comprehensive law should be prepared for carrying out related policies in order to spark a synergy among policies for protecting and supporting VAW victims.

In order to examine what should be included in the comprehensive law, we will look into what policies for protecting victims of domestic/sexual violence and sex trafficking do and do not have in common.

Current policies for protecting victims of domestic/sexual violence and sex trafficking can be divided into the following three areas: 1) support for victims; 2) facilities; and 3) management systems and prevention. What applies to all the three areas or to each individual realm can then be reviewed.

Services available to all victims of domestic/sexual violence and sex trafficking are as follows: counseling, healthcare support, legal counseling, counseling centers, shelters, counselor qualifications/training, facility operation/management, facility assessment, surveys, prevention training, and violence prevention promotional video services, and a violence elimination week.

Housing support is offered only to victims of domestic/sexual violence, while employment support is delivered to both victims of sexual violence and of sex trafficking.

The designation of VAW care hospitals is a service for victims of sexual violence and sex trafficking, while self-support center services are offered only to victims of sex trafficking.

Emergency call centers are operated based on the Act on the Prevention of Domestic Violence, but are also requested to offer sexual violence and sex trafficking-related counseling services. A general support center for victims of sexual violence has been established and managed pursuant to the Act on the Prevention of Sexual Violence, but it is also asked to provide domestic violence and sex trafficking-related counseling services.

Emergency call centers and the general support center for victims of sexual violence have delivered services to all victims of domestic/sexual violence and sex trafficking. Therefore, it is believed that related regulations can be included in the Comprehensive Act or the Framework Act on the Prevention of VAW. On the other hand, specifically required services are difficult to address in a comprehensive act and should therefore be set forth in each individual law.

Overseas Laws for the Protection and Support of Victims of Violence Against Women

UK Laws and Policies

UK Laws

The UN adopted its Declaration on the Elimination of Violence Against Women on December 12, 1993 and presented its Strategy for the Elimination of Violence Against Women at the Fourth World Conference on Women held in Beijing in September 1995. Against this backdrop, the UK revised its laws focusing on domestic violence.

Rather than resorting to individual laws, the UK established a legal foundation for VAW-related policies via the revision of its family law and the enactment of its Protection from Harassment Act. After several revisions of the related laws, it introduced a comprehensive law called the Domestic Violence, Crime, and Victims Act in 2004 to set up a legal framework for pursuing policies for victims of VAW and other crime. The act clearly stipulates matters concerning domestic violence, general crime, and the protection and support of victims, thereby functioning as a legal basis not only for implementing domestic violence-related policies, but also for publishing practical guidelines for the protection and support of victims of crime.

By amending the Domestic Violence, Crime and Victims Act 2004 on March 08, 2012, it adopted a broader concept of domestic violence. Section 5 of the Domestic Violence, Crime and Victims Act 2004 amended from “causing or allowing the death of a child or vulnerable adult” to “causing or allowing a child or vulnerable adult to die or suffer serious physical harm.” In consequence, the offence of domestic violence was expanded and protection and support of victims was expanded as well. Accordingly, the UK Ministry of Justice improved its Code of Practice for Victims of Crime in October 2013.

UK Policies

At the Commonwealth level, the UK clearly prescribed violence against women and children as a specific category for policy-making. Through the Domestic Violence Disclosure Scheme (DVDS), also known as the Clare Act, the policy measures can be examined in detail.

The DVDS was crafted following an incident in which a woman named Clare Wood was murdered in her home by her former boyfriend. In accordance with the scheme, a woman may request that police disclose a new partner's record of violent crime or abuse. This policy acknowledges the rights of real or potential victims, third parties (parents, neighbors, and friends), and institutions to request that law enforcement agencies disclose personal information. If they call the 101 emergency hotline or otherwise contact the police, they are allowed easy access to such information.

Moreover, the UK government has published VAW-related policy books, such as policy booklets (the Ministry of Home Office) and official materials (2010-2015) concerning violence against women and female children.

US Laws and Policies

US Laws

The State of New York enacted a law in 1962 to allow protection orders to be issued, the first in US history. However, judges were reluctant to order husbands evicted from their homes. Since the mid-1970s, each state has devised and carried out domestic violence-related policies requiring that such violence be reported.

The US government implemented domestic violence-related policies via the Family Violence Prevention and Service Act in 1984. In the 1990s, starting with California, all 50 states eventually legislated stalking-related laws.

The Violence Against Women Act of 1994 (VAWA), which was a result of the Vienna Declaration and Programme of Actions adopted at the World Conference on Human Rights in 1993, was devised under the influence of the active Feminist movement in the US. Even though it had already established laws regarding domestic/sexual violence and stalking, the US government enacted a new law focusing on VAW. Through this scheme, the US government has described and implemented clear guidelines on how criminal justice agencies should address VAW.

The VAW-related law is not limited to protecting and supporting female victims. In the process of re-approving the scheme in 2005, the law was revised to protect and support male victims as well. In 2013, whether homosexual victims should be excluded from the protection and support system emerged as a major question.

US Policies

The State of New York supported sexual/domestic violence-related programs in 2014 by using VAWA funds. Via the STOP (Service, Training, Officers, and Prosecutors) program,

the US government has provided VAW prevention training services to related officers and prosecutors.

Implications

The US, which applies the common law system, enacted VAWA, but the UK, which uses the same case law scheme, created a special law concerning domestic violence separately from its existing family law. Around the time when the Clare incident occurred, the UK government realized that the existing concept of VAW with its excessive focus on domestic violence was too narrow. As a result, it decided in 2012 to redefine domestic violence as forceful interpersonal control not limited to the home or to the concept of domestic violence as applied in family violence-related laws. This shows that the UK's criminal justice system has become oriented towards resolving criminal issues, not focusing on offenders but on victims in order to mitigate damage.

The US enacted VAWA in 1994, which was not regarded as a truly new law purely for addressing VAW. Instead, existing rules and regulations were grouped and revised one by one as part of efforts to combat VAW. This has huge implications for Korea.

In addition, the STOP program and other measures were stipulated, with training services for agency staff and subsidies clearly stated to prevent problems from occurring during the administrative process. Effective guidelines on the directions and manner for carrying out government policies were presented in the process of re-approving the program. This is deemed to be the main characteristic of the US VAWA.

Survey of Experts on Protecting and Supporting Victims of Violence Against Women

Overview

While conducting two rounds of focus group interviews with experts to gather their opinions on the comprehensive legal system for dealing with VAW, we collected input on the following three matters: 1) The term, VAW, has not been applied in Korea's legal and policy environment; 2) VAW-related laws have been separated from one another; and 3) The necessity of setting up a comprehensive legal system for handling VAW.

Results

The term violence against women has been frequently used by the UN and in the US and UK in the process of crafting laws and policies. However, in Korea, it has been applied only in private and academic fields and has rarely been used in a legal or policy environment. This closely relates to the fact that there is no comprehensive law concerning VAW.

Therefore, services for VAW victims have been offered via separate laws regarding domestic violence, sexual violence, and sex trafficking. This system does not reflect the reality in which victims with multiple types of problems seek help from protection and support facilities. The current schemes designed exclusively for victims with a single type of problem were found to encounter difficulties in protecting and supporting VAW victims with multiple types of problems.

However, concerns have been raised regarding the enactment of a comprehensive legal system for resolving this issue. Experts actively supporting VAW victims do acknowledge the need for a comprehensive legal system, but at the same time are worried that the current protection and support system based on individual laws could be subjected to restructuring.

Therefore, cooperation with related institutions and other protection and support agencies for victims with different types of problems is required in order to effectively support VAW victims. To this end, consultative organizations were established in some regions. If such organizations could fulfill their duties based on the previously described comprehensive legal system, VAW victims could be more effectively supported.

Improvements to the Legal System for the Comprehensive Operation of the Protection and Support of Victims of Violence Against Women

Basic Direction of Legal System Improvements

Structure

1) The Need for Modifying Policies for the Protection and Support of Victims of Violence Against Women, Against a Backdrop of the Focus of Women's Policies Shifting Towards Gender Equality

Violence against women (VAW) resulting from an imbalance in physical power between men and women is deemed to be a serious violation of women's human rights. Current policies for protecting and supporting victims are classified into domestic violence, sexual violence, and sex trafficking. They should be promoted with the goal of preventing VAW, which would in turn create greater synergy effects.

With the full conversion of the Framework Act on Women's Development into the Framework Act on Gender Equality in 2014, there have been requests to reflect principles of gender equality into policies for protecting and supporting victims. Along these lines, victims of violence should be protected and supported regardless of gender. Considering this policy shift, now is the time to convert policies for protecting and supporting victims of domestic violence, sexual violence, and sex trafficking into policies protecting and supporting VAW victims.

2) Resolving Discrepancies Between Laws and Reality

Emergency call centers are clearly stipulated in the Act on the Prevention of Domestic Violence and have been positioned as emergency services for domestic violence victims. In reality, 1366, the emergency call center for women, has been providing services not only to domestic violence victims, but also to victims of sexual violence and sex trafficking. Pursuant to the Act on the Prevention of Sexual Assault, a comprehensive support center was set up to offer services to victims of sexual violence. However, the center has also been delivering counseling services to victims of domestic violence and sex trafficking.

In order to resolve such discrepancies between the laws and reality, a comprehensive law should address these issues rather than individual laws.

3) Integration of Similar Service Regulations Found in Individual Laws

The Act on the Prevention of Domestic Violence, the Act on the Prevention of Sexual Violence, and the Act on the Protection of Victims of Sex Trafficking all include the following regulations in common, and consequently the same services have been offered to victims: counseling, medical support, violence prevention training, surveys, violence prevention promotion, and a violence elimination week. Therefore, these items could all be more efficiently set forth in a comprehensive law.

In particular, systems for violence prevention are stipulated in each of the aforementioned three laws, raising further need for a single comprehensive law.

4) Introduction of a New System for the Protection and Support of Victims of Violence Against Women

The Basic Plan for Women's Human Rights Promotion (the Ministry of Gender Equality and Family), the Alliance for a Children's and Women's Safety Zone, and the White Paper on Violence Against Women are all regulations that can difficult to include in separate laws on violence. For the introduction of such systems, a comprehensive law is deemed to be required. In order to enable women's human rights promotion policies to include items on the prevention of domestic/sexual violence and sex trafficking and the protection of victims, a comprehensive law superior to these individual laws is required.

5) Type of Comprehensive Law

Whether three individual framework laws on VAW are required or if a comprehensive law encompassing the three acts should be enacted needs to be discussed during the process of modifying the current legal system.

If the proportions of similarities and discrepancies among the laws are considered to not significantly differ, framework or individual laws can be applied. However, where different provisions can be converted into common regulations, a comprehensive law can also be adopted.

6) Title of the Comprehensive Law

Experts' opinions on a suitable title for a comprehensive law were also gathered. According to the results, they proposed the following titles, listed in the order of preference: ① the Framework Act on the Prevention of Violence Against Women; ② the Framework Act on Violence Against Women; ③ the Framework Act on the Prevention of Violence; and ④ the Framework Act on the Protection of Victims of Sexual Violence, Domestic Violence, and Sex Trafficking. The following titles were also mentioned: the Framework Act on the Support for Victims of Violence Against Women, the Framework Act on Gender Violence and Sexual Exploitation, the Act on the Prevention of Violence and the Protection of Victims Thereof, and the Framework Act on Preventing Violence Against Women.

In this study, the Framework Act on the Prevention of Violence Against Women (tentative title) is presented, which was chosen by the greatest number of respondents.

Contents

1) A Wider Concept of Victims of Violence

The concept of domestic violence victims as prescribed in the Act on the Prevention of Domestic Violence needs to be expanded to include those who are indirectly harmed due to family violence, namely victims' family members. The current act limits the scope of domestic violence victims to those who are directly harmed by domestic violence. However, those who are indirectly harmed, such as victims' family members, should also be protected. To this end, the related provision in the Act needs to be revised as follows: 'Domestic violence victims' refers to those who are directly or indirectly harmed due to domestic violence.

2) A More Extensive Scope of Violence Against Women

Herein, we propose that regulations on expanding the scope of violence against women be included in the Framework Act on the Prevention of Violence Against Women. The current Framework Act (tentative name) adopts a narrow concept of violence against women, including only domestic violence, sexual violence, and sex trafficking. However, a broader concept of violence against women can be applied by expanding the paradigm of violence against women.

3) Principles of the Protection of Victims in Criminal Procedures

Under the current legal system, the legal term 'protection of victims' is used, but it is necessary to recognize victims not as people who should be taken care of, but as possessors of rights. In particular, this should be clearly stipulated in connection with the protection of victims in criminal procedures. Protecting victims during the investigation and trial process is prescribed in punishment laws, but the basic principles need to be clearly stated in framework laws for the safeguarding of victims.

Among the principles involved in the protection of victims, the prevention of secondary damage should be highlighted. In addition, training and promotion services have to be

delivered in order to effectively monitor the enforcement of laws and to refine the ways in which related staff members understand this issue.

4) Needs for Revising Regulations for Financial Support for Ensuring Human Rights in Information Management

In order to prevent one person from receiving double subsidies, a central management system was introduced through which information on victims residing in protection and support facilities that are classified as social welfare facilities could be entered into the computer system for social welfare. Unfortunately, the scheme faced strong opposition from related facilities and groups. Therefore, victims should be considered not as recipients of welfare benefits, but as emergency aid recipients during the three to six months required to ensure that they attain a minimum level of stability and treatment. In this regard, it is also necessary to discuss adjusting the system to enable security and financial assistance services to be offered to victims without registering them into the computer network.

5) Regulations on Training Law Enforcement Officers

Training law enforcement officers responsible for addressing cases of VAW such as domestic/sexual violence and sex trafficking should be clearly set forth in related laws. In accordance with VAWA, the US has re-approved related laws that provide subsidies for training law enforcement officers, which has significant implications for South Korea. We similarly need to allocate part of the funds for the protection of victims of crime to the training of law enforcement officers by including regulations on training officers responsible for VAW in the Act on the Protection of Victims of Crime. If this occurs, more substantial training services can be provided to officers.

Legal System Improvements

General Provisions

The section on general provisions should contain rules and regulations regarding the objectives and principles of the law; definitions of terms; responsibilities and duties of the central and local governments; and relations with other laws. The aim of this law is to prevent VAW and protect and support its victims, while the basic principle is that VAW victims and their family members possess the right to protection and support services to enable their human rights and welfare to be respectively secured and promoted.

Women's Rights Promotion Policy-making, etc.

Pursuant to this section, a Basic Plan for Promoting Women's Rights should be crafted every five years before being reviewed and approved by the Gender Equality Commission. Heads of related central administrative agencies and mayors/governors should devise enforcement plans, which would then be modified by the Minister of Gender Equality and

Family. Surveys for policy-making should also be prescribed.

Victims' Rights and Key Measures

Victims' right to be protected and supported, their right to be protected from secondary damage, respect for victims' opinions, and the prohibition of imposing unfavorable measures on victims should all be prescribed, as well as related measures and policies for the prevention of damage.

Facilities

This section includes regulations concerning the installation and operation of counseling centers and protection facilities, regular supplemental training, respect for victims' opinions, reporting facility closures (including temporary closures), and decertification. The types of and admission into protective facilities are separately stipulated here, since each type of VAW victim should be specially protected. It should also prescribe a legal basis for the Women's Human Rights Institute of Korea, as well as for the Alliance for a Children's and Women's Safety Zone.

Supplemental Provisions and by Laws

The supplemental provisions would deal with the publication of a white paper and the delegation of authority, while the bylaws should prescribe rules and regulations on the enforcement of laws.

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