

The Drawbacks of South Korea's Law System on Sexual Crimes and How They Should Change

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ABSTRACT

Whilst sexual crimes have been extremely prevalent in South Korea in recent years, several drawbacks have led the country's laws on sexual crimes to hold back when properly punishing and incarcerating such offenders. By conducting both qualitative and quantitative research, the research paper has identified three prominent drawbacks that the country's law system currently faces. Thus, this paper focuses on the level of leniency, the laws' negligence of sexual crimes, and the lack of female representation, which is supported by the inclusion of two cases that involve rape and sexual exploitation, respectively.

Key words: *laws, sexual crimes, leniency, negligence, female representation*

Research Question: What are the drawbacks of South Korea's legal system regarding sexual crimes and why do they exist?

INTRODUCTION

Sexual crimes are defined as "any sexual act directed towards another person where the victim does not or is unable to give their consent" (Law Insider). One country in particular, South Korea, has experienced a significant increase in such crimes over the past decade, with the rate being 58.1 of 100,000 in 2020 (Statista, 2022). However, laws regarding the former in S. Korea have been shown to tolerate even the most inoffensive acts of sexual crimes, hence emphasizing the drawbacks of the system rather than its positives. Due to this, the research paper aims to point out the level of leniency, negligence of such crimes, and lack of female representation in S. Korea's laws on sexual crimes, and possible amendments that could be made to the current system.

MATERIALS AND METHODS

This paper underwent significant amounts of both qualitative and quantitative research to investigate the country's current laws on sexual crimes (ie. sexual harassment, rape, and digital sex crimes), as well as their frequency. Secondary research was conducted to underline relevant cases of any sexual crimes listed, as well as the punishments that came after the acts. All sources have been cited and listed in APA format.

DISCUSSION AND RESULTS

To begin with, the level of leniency present in S. Korea's law system regarding sexual crimes is one evident drawback. Currently, Article 297 of S. Korea's laws on crimes concerning rape and other sexual crimes states that should one have sexual intercourse with another through violence or intimidation, they would be punished by "imprisonment a limited term of at least three years" (KLRI, 2012). Further, Article 302 of the same section states, "A person who, through fraudulent means or by the threat of force, has sexual intercourse or commits an indecent act on a minor shall be punished by imprisonment for not more than five years" (KLRI). In 2021, it was found that suspended jail terms (for sexual crimes), the order of deferring a sentence to put the defendant on probation, peaked at 59.1 percent in 2019, resulting in a 46.3 percent increase from 2010 (Korea Herald, 2022). Adding to the question of leniency was the fact that for convictions with jail time, the average sentence was 45.2 months in 2019, a decrease from the 61 month-term in 2015 (Korea Herald, 2022). The low levels of punishment for the convicted have been stated to focus more on the potential aspects that reduce the imprisonment sentence, along with the "lack of 'gender-sensitivity' from the

judicators” (Park, 2019). Contributing to the former, sexual assault has been viewed as ‘private matters’ to the country’s legal system (International Affairs, 2022), hence adding to the visible leniency when punishing such crimes.

Moreover, South Korea’s legal system has proven to easily dismiss or neglect the severity of sexual crimes, primarily due to its emphasis on criminal defamation laws. Such restrictions in the country have resulted in its criminal defamation laws focusing only on whether “what was said or written was in the public’s interest”, rather than whether the truth was spoken or not (Human Rights Watch, 2017). Following Article 307 of S. Korea’s laws on crimes against reputation, one would be punished with imprisonment ‘for not more than two years’ or a fine not exceeding five million won (KLRI, 1995). As such, victims of sexual crimes may be punished with harsher sentences compared to the actual offenders of these crimes. Adding on, the country’s negligence (in regards to sexual crimes) resulted in 92 percent of sexual exploitation crimes receiving an average fine of 2.9 million won and nothing more, even when victims were children and adolescents (Human Rights Watch). Further, research has shown that while over 5,000 cases of rape were reported annually between 2014 and 2018, the prosecution rate has consistently remained between 40% to 45% (Goedde, 2020).

Year	Incidents	Prosecutions	Prosecution rate
2014	5,154	2,207	42.8%
2015	5,194	2,251	43.3%
2016	5,531	2,215	40.0%
2017	5,783	2,572	44.5%
2018	5,938	2,448	41.2%

Source: Prosecution Service, Crime Analysis Report

While incidents have risen, rapes and sex crimes are generally underreported. Furthermore, it is difficult to compile accurate statistics due to the lack of a single statistical institution related to sex crimes.

Furthermore, the lack of female representation in the country’s legal system has been yet another drawback. As of 2022, only thirty percent of all judges in the country are women, while the percentage of police officers is even less with 4 percent (International Affairs, 2022). The lack of gender sensitivity comes from the fact that the victims are the ones blamed for ‘allowing’ the crime to happen, and this is especially prevalent in sex crimes committed in schools. Parents of the offenders, and even the faculty in some instances, defend the former by insisting that all males have a “natural sexual impulse” (Brito, 2022), and instead direct the occurrence on the victims. The nonexistent gender sensitivity, as indicated through the claims of victims actually having the power to defend themselves in such situations, acts as an obstacle of properly reporting and convicting sexual crimes.

Court Cases

In 2020, 70-year-old Cho Doo-Soon, a notorious sex offender, was released from prison after serving a twelve-year sentence for brutally raping an 8-year-old girl in 2008. The victim had sustained long lasting injuries on multiple parts of her body; Cho’s sentence, which was initially listed as fifteen years of imprisonment, was reduced to twelve years after he appealed on the fact that he was inebriated when he raped the victim (Asia Times, 2020). The level of leniency, which was clearly visible in Cho’s punishment, shows how sex crimes, even when forced upon a minor, are not properly punished in South Korea’s legal system. Additionally, the leniency exercised on this crime can be underlined by comparing this to the punishments enforced in the U.S, where for sex crimes such as rape, the offender would have a minimum sentence of 25 years, along with enacted GPS or electric monitoring specifically for sex offenders (Korea Herald, 2011).

Another infamous case of a sexual crime was the Nth Chat Room, where the offenders committed crimes falling under the category of ‘digital sex crimes and sexual exploitation’. From 2018 to 2020, the offenders used messenger apps to illegally produce and distribute sexual exploitation videos (NCBI, 2022). As stated by the National Center for Biotechnology Information, a total of 1154 victims were confirmed, with over 60 percent being in their 20s or younger. The offenders, who paid money or posted sexually explicit videos of women with hidden cameras, obtained them by means of blackmail and coercion (Human Rights Watch, 2020). While the number of participants in these sexual crimes

was over 260,000 (including illegal video holders and distributors), it took a petition signed by millions of Koreans for the main instigator's identity to be revealed to the public (Human Rights Watch), which supports how sexual crimes (in this case digital and sexual exploitation) are more often than not neglected and easily dismissed.

Changes in the system

Consequently, the aforementioned drawbacks of South Korea's law system (of sexual crimes) have led to sexual crime offenders not being indicted properly. However, several amendments can be made to combat these weaknesses; through the provision of proper sexual education lessons in schools and a heavier emphasis on imprisonment rather than fines, the country's laws may undergo an improvement to bring justice to the victims. First and foremost, issuing proper, unbiased lessons on sex education may change how victims choose not to speak up for what they have experienced, thus having the potential to counteract the laws' negligence towards sexual crimes. While the current curriculum understates the offenders' actions and instead teaches female students that they are to blame for any sexual crime committed against them (Brito, 2022), the implementation of unbiased lessons may juxtapose this. To add on, placing more emphasis on the actual punishments has already been put into place; while possessing non-consensual images has been criminalized and the age of consent increased from 13 to 16 (Human Rights Watch), this is only the beginning for South Korea to reform their law system. As the country's system has yet to address the still lenient sentences placed upon perpetrators of sexual crimes, more should be done to bring justice to the victims and prevent offenders from being let go with a mere fine.

CONCLUSION

To conclude, the main drawbacks that combat the South Korean law system's ability to effectively punish those who have committed sexual offenses are the level of leniency, negligence of such crimes, and the lack of female representation. These are due to the country's emphasis on concerns of privacy, criminal defamation, and the lack of gender sensitivity that is ingrained in Korean society today. Considering the incumbent laws regarding this issue, future research on this should be centered on reducing the leniency of punishments for sexual crimes, rather than focusing on ways to reduce the perpetrators' sentences. That being said, with the mindset currently implemented in S. Korea, the amendments will depend on the duration of time it takes for the country to change the former.

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