

2020 Conference on
Combating Hate and Discrimination

Road to Equality

: Success and Challenges of the Equality and Non-discrimination law

Seoul Bar Association

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Equality: Concepts

- Ancient and medieval societies were not founded on the principle of equality. Rather, it is an era in which discrimination such as hierarchical order and class and caste system is taken for granted
- So even though there were spontaneous efforts, but equality was largely a modern construct
- Equality was an empowering language and political slogan for oppressed groups such as women and slaves
- Beyond the political slogan, equality gradually reorganized the meaning and became the basic principle of the society
- In particular, it leads to specific legal developments such as the anti-discrimination legislation in the mid-20th century

Legal Developments

- In the new order after World War II, there was a flow of formal equality, such as the codification of equal rights under the Constitution and the grant of equal citizenship
- Many countries have begun to legalize specific anti-discrimination treaties, such as the CERD and CEDAW, as well as the ICCPR and the ICESCR, which also contain obligations against discrimination
- In this process, some people who had various kinds of differences (race, ethnicity, gender, sexuality, religion) achieved formal equality
- In the 1948 Constitution, Korea declared the principle of general equal rights (Article 11) and granted women the right to vote (Articles 25 and 26)

Legal Developments

- In the mid-20th century, anti-discrimination laws with one or two protected grounds were introduced in various countries including the United States, United Kingdom, and France
- Expanded to European Community jurisdiction with EU directives in the 2000s
- In Korea, anti-discrimination laws such as the Equal Employment Opportunity Act (enacted in 1987), Anti-Discrimination against Persons with Disabilities Act (enacted in 2007), and the Age Discrimination Prohibition Act in Employment (enacted in 2009) were adopted

Law and Economics

- Meanwhile, in law and economics, many people argued that the cost of discrimination and prejudice is a loss that hinders social development (OECD's "Price of Prejudice" report, etc.)
- And recalling that the equality legislation is not an unfair restriction on private autonomy, but a restriction required for the common good of society
- Many corporates started to support equality law, introduce its own non-discrimination policy, and boycott the places where new discriminatory laws and policies are introduced

Equality Law: Components and Concerns

- Definition of Discrimination
- Scope of the protected grounds
- Protected area
- Direct discrimination, indirect discrimination, harassment, retaliation and its components
- Positive action
- Remedy
- Monitoring and Enforcement Bodies / Statistics
- In other words, what is discrimination, is there a way to recognize discrimination, is remedies sufficiently accessible to victims, which individuals and groups are the main victims and inequality is improving?

Ongoing Challenges of Equality Law

- There is also a regret that the current achievements do not meet the initial optimism
- Pointing out that the roots of discrimination are not sufficiently eradicated
- Nevertheless, it made a starting point for transforming society itself
- Finding improvement in failure
 - Efforts to comprehensively integrate existing individualized and segmented legislation to effectively respond to systematic inequality
 - Improving access to remedy for victims of discrimination
 - The importance of the implementation body, preventive measures, and active obligations is further highlighted

Equality Law: International Community

- Despite different national legal systems and traditions, there are common difficulties and challenges
- Some countries have the origin of the equality law from the international documents
- As an interdisciplinary system, the network among groups such as equality body practitioners, academics, lawyers specializing in equality law, and judges is also active
- Domestic courts have also begun referencing and citing other national equality law precedents beyond their own jurisdiction
- Therefore, there is active mutual influence beyond the segmented domestic legal system

Lawyers for Equality

- Influence on legislation by drawing leading precedents and laws
 - Brown v. Board of Education (1954) (started by NAACP) and the Civil Rights Act of 1964 in the US
 - 2013 Kyoto Racial Discrimination Civil Lawsuit and 2016 Osaka Hate Speech Ordinance and Hate Speech Act at the national level in Japan
- It also plays a role of overseeing compliance with the Equality Act and expanding the legal principles by filing various lawsuits to rescue victims after legislation.
 - The theorists and legal practitioners such as Catherine McKinnon introduced the theory of sexual harassment as sex discrimination and it expanded to many countries.
 - Bostock vs. Clayton County Case (2020) (“sexual orientation and gender identity discrimination as sex discrimination”)
- It also creates an opportunity for future improvement through the experience of failed relief.

Korea's Equality Act of 2020

Examples of the effects of the individual anti-discrimination law in Korea

- Amid the recent coronavirus crisis in Korea, <Coronavirus Infectious Disease-19 Central Accident Control Headquarters> and the media have been using the expression “blind infection” for an infection whose route is unknown.
- A people with disability organization (“Korea Blind Union”) sent an official request to refrain from using the term, and the headquarters immediately took corrective action with the expression “infection with unknown path”.
- Individual anti-discrimination laws, such as the “Disability Discrimination Act,” provide the basis and language for responding to and confronting various discrimination, even if difficult remedies such as lawsuits are not used.
- Since discrimination and hate gain strength in a society where hate speech is prevalent, such a correcting effect can be expected in the Equality Act, a comprehensive prohibition against discrimination

Why the “Equality Act” a comprehensive anti-discrimination law

- “Equality and Anti-discrimination Law”, “Equality Law”
- Clarify that the law is the basis for guaranteeing equal rights, a principle of our constitution and international human rights norms
- Personal identity has various attributes overlapping and connecting experiences
- In order to accurately detect discrimination, a law that can comprehensively interpret various reality of discrimination is necessary
- Prevent verticalization between protected grounds and apply consistent and unified standards

Countering hate during the legislative process

- Since the process of enactment is also a social dialogue that learns the values of equality and anti-discrimination, the principle of intolerance to discrimination and hate should be manifested
- Answers various questions and corrects misunderstandings through Q&A of the Equality Act produced by the National Human Rights Commission of Korea
- Collecting voices of support from civil society, academia, legal field, and religion
- Establish a forum for dialogue between various stakeholders

Efforts of Seoul Bar Association

- 24 July 2020. Establishment of Task Force for promoting the enactment of the Equality Act (Chairperson: Lawyer Jong-Woon PARK)



Efforts of Seoul Bar Association

- On July 10, 2020, the Seoul Bar Association and the National Human Rights Commission of Korea held a meeting regarding the enactment of the Equality Act
- We sympathize with the necessity of enacting an equality act for the realization of the right to equality, which is a fundamental right under the constitution, and to seek and work on various measures to enact an equality act that is expected to contribute significantly to respecting human rights without discrimination among all members of society, we established the task force
- Through the TF activities, we will make every effort to enact the equality law within this year, and we will continue to do our best to defend human rights and realize social justice so that there are no one left behind for human rights in our society

Conclusion

- Many countries are now entering a period of improvement and refinement beyond the introduction period of the legislation
- We introduced a remarkable equality act bill based on the experiences of other countries, our individual anti-discrimination legislation, and the National Human Rights Commission's response to discrimination
- Our association will make great efforts to enact the equality act within this year through TF activities
- We are confident that the enactment of the Equality Act and our challenge to realize equality afterwards will be a rewarding journey to make our society a better society