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Indecent Act by Compulsion in KOREA Criminal LAW

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Abstract

This paper deals with the controversy over the gap between the theory and practice of the concept of forced harassment in Korea, in particular so-called 'indecent act by blitz'. The concept of 'indecent act by compulsion' is necessary for a criminal offense to be established by Korean criminal law. However, since the Supreme Court admits that 'indecent act by blitz' is one of indecent act by compulsion, there is a difference in opinion on the concept of indecent act by compulsion between the legal practice and legal academia. The concept of indecent act by compulsion includes sexual molestation. The concept of the sexual molestation that academics and practitioners generally agree is as follows. The content of sexual molestation is an act in which an actor acts for sexual stimulation, excitement, or satisfaction, and is an act that causes the victim to feel feelings of sexual shame and disgust, and is an act that infringes the victim's sexual freedom. However, there is a great difference between the general interpretation of the academic community and the interpretation of the practice in relation to the specific scope of indecent act by compulsion, which is the subject of criminal offense.

This paper analyzes Supreme Court precedents and academics viewpoints to solve these problems. The purpose of this study is to analyze the meaning of sexual molestation and threat and assault expressed in cases and doctrines and analyze the meaning of sexual self-determination right, the essential characteristics of sexual molestation, and the threat and assault.

[Keywords] *Indecent Act by Compulsion, Indecent Act by Blitz, Sexual Self-Determination, Freedom of Intent, Simple Indecent Act*

1. Introduction

On September 10, 2015, the Korean Supreme Court declared simply 'an act of holding both arms high and holding a victim to stop,' as an attempt to force a sexual assault without physical contact[1]. The judgment "acts of force against the will of the other party on the purpose of sexual assault, that is, acts of violence have been carried out, but failing to achieve the results of an act of indecent assault, an attempt has been made to commit an act of force abuse priority." After the argument, "This law also applies to the so-called "surprise attack" in which the act of

assault is recognized as an abusive act." After approaching the victim and hugging the victim suddenly from behind, the act of sexual harassment or disgust. The defendant's arm does not reach the victim's body because it can be regarded as an act of so-called "surprise attack" because it is an act that violates the victim's sexual freedom as an act against the good sexual moral notion. The act of embracing the victim suddenly behind the victim is an act of tyranny against the will of the victim and corresponds to the act of assault. This is the view that certain acts without physical contact can be seen as the beginning of vio-

lent acts that can be recognized as forced enforcement[2]. However, in the background of such a position, the attitude of recognizing the exercise of sexual tactile force on the body, which is carried out in an anticlimatic manner against the will of the victim, as the compulsory act of constitutional act of forced indictment under the Korean criminal law. In addition, it appears that there is a position that does not place a de facto lower limit on the extent of assault, which is a means of enforced extortion and the requirement to establish. This article explains the background of the position of the Korean Supreme Court and discusses the requirements for the constitution of forced indecency in Korean criminal law.

2. Controversy over Interpretation of Forced Apology in Korean Criminal Law

2.1. Raising the issue-practice on the concept of forced enforcement and disagreement among academics

There has been considerable disagreement between practice and academic circles since the Supreme Court acknowledged what it called "indecent act by blitz," as one form of punishment for criminal law. In terms of the constitutional nature of the perpetration act, which is a premise in the establishment of the concept of forced extortion, the actor's point of view is 'act for sexual stimulation, excitement or satisfaction' and from the victim's point of view, But it seems that both academics and practitioners generally agree that sexual violence is an act that violates sexual freedom. However, there is a great difference between the general view of academia and the range of practice recognized as to whether or not an act is evaluated as forced enforcement and is subject to the rate of duty of forced enforcement. This difference is due to the difference in viewpoints between conceptual distinction between the perpetrator's act and the "forced" perpetrator, and the viewpoint of the meaning of demanding assault or intimidation as the means of establishing forced extortion, Of the total population.

2.2. The position of the practice in the case of the supreme court of korea

Among the judgments of the Supreme Court, which are judged to represent the position of the practitioner, a relatively recent precedent defines the concept of extortion as follows.

Forced offense is a crime that infringes the individual's right to freedom of sexual freedom, and "indecent act by force" in the provisions of the above law is not enough to cause sexual shame or disgust for the general public and is against the good sexual morals, of the victim's sexual self-determination. Therefore, the act of "lewd act"(or the act prescribed in Article 41, Article 1 of the Act on Punishment of Minor Offenses Against Overexposure) defined by the performance of Article 245 of the Criminal Act for the purpose of protecting the general social legitimacy of sound sex, It can not be said that it is not necessarily a "indecent act by force" against the person. Above all, the act of the problem should be evaluated as infringing the victim's sexual freedom[3].

In addition to the definition of this concept, this case describes the assault or intimidation, which is a means for establishing a forced assertion as follows.

A compulsory assertive offense is committed by assault or intimidation by extorting a person, so that the assault or intimidation is enough to make it difficult to reprimand. And whether or not the assault was such that it would make it difficult for the victim to protest, not only the content and extent of the assault, but also the fact that she exercised her tactile power, the relationship with the victim.

In summary, the concept of suicide refers to an act that has a characteristic of behavioral effects that it is insufficient to have the essential character of causing sexual shame and disgust, and that it infringes on the victim's freedom of sexual self-determination. In addition, forcible abduction in order to constitute a forced assertion can be defined as a case in which abusive behavior such as the above-mentioned concept is performed by means of assault or intimidation enough to

make it difficult for the victim to stand up. In some cases, however, when the act of assault is the nature of an abusive act, it is judged as follows.

Indecent act by compulsion include cases in which an assault or threat is imposed on an opponent to make it difficult for the person to stand up and then the offense is perceived as a misdemeanor. The assault in this case does not necessarily require that the opponent's intentions be suppressed, and it does not matter whether the strength of the force is present as long as there is an exercise of tangible power against the other's intention. (...) Even if the act of touching the victim's breast is only a momentary act while dancing with the victim, it is not only a violation of the sexual freedom of the victim, but also a violation of the victim's will The act of assault itself is recognized as an abusive act, which is a indecent act by compulsion[4].

If the assault activity itself is recognized as an abusive act, as it expresses in the same case, it is judged that this is a Indecent act by compulsion, which is a constituent of forced abuse, even if it is only a momentary act. In regard to the so-called 'indecent act by blitz', it takes a position different from the previous case in which it is demanded that the abduction or intimidation, which is the means of such abduction, is such that it is difficult for the victim to protest by saying "regardless of the strength or weakness of the force". The position of this case follows from the case of 1983[5] and the case of 1994[6], which took this position for the first time in a similar case. According to this position, cases where the offense of forcible assault pursuant to Article 298 of the Criminal Code is applied include ① cases in which abusive acts are carried out together with assault or intimidation to make it difficult for the victim to protest; and ② cases of assault, And the case where the act of killing is performed at the same time. The position of the case in which the assault offense is to be extended to the case where the assault activity itself is recognized as a misdemeanor is confirmed once again in the judgment of 2015 introduced in the beginning.

2.3. Academic view of interpretation on indecent act by compulsion

In academia's interpretation of forced offense, recent observations show that an act that meets the constitutional requirements of this crime has an objective attribute of raising sexual shame or disgust, while at the same time[7], It should emphasize that it should have the character of infringing on freedom[8][9]. These views embody this in two aspects in the concrete interpretation of the forced assertion. One is to limit the concept of suicide, which is a constituent requirement, to remarkable acts that violate sexual freedom, It is demanding a certain degree of intimidation in terms of the effect of the victim's difficulty in protesting.

2.3.1. Limited interpretation of the concept of indecent act

Many of the views on the concept of forced harassment are not forcible, such as 'touching a woman's hand or knee' or 'touching her breast over a woman's clothes'[10]. On the basis of this, it is said that such an act is not enough to cause sexual shame or disgust[10], even if it raises sexual shame or disgust, it is difficult to evaluate it because it is weak because of the infringement of sexual freedom[11], and that there is a need to be limited to acts that seriously infringe sexual freedom based on the principle of supplementality of the criminal law[12]. Specifically, sexual shame or repulsion which is the criterion of abduction can vary greatly depending on the individual, and it is a concept that can not but be influenced by the sex culture of the society in question. Therefore, in order to objectively secure the victimization of the abusive act, it is a concept that can not be restricted by the standard of the prominence of the infringement.

2.3.2. Limited interpretation of the extent of assault

Most of the theories about assault and intimidation, which is a means of forcible assault, understand assault and intimidation as a requirement for the abusive act to be evaluated as forced enforcement. In other words, it is necessary to understand the assault or intimidation in the concept of certain means distinguishable from the perpetration act itself, and to make certain forcible acts to be

carried out by assault or intimidation, And that it is a requirement. Many opinions on the degree of assault or intimidation should be seen at the same level in terms of assault and intimidation, which is a requirement for the establishment of rape. In the current Criminal Law, rape and forced assault are equally grounded in the basic crime constitutional requirement of protecting the right to sexual self-determination. However, because of the diverse nature of the act, enforced extortion does not necessarily need to be overridden by the opponent's rebellion like rape, so the assault or threat does not have to be enough to suppress the opponent's rebellion, There is a lot of opinion recently that it is enough[13]. This dissenting opinion appears to be due to the perception of the fact that extortion is an infringement of the arbitrary freedom of sexuality and that such infringement can be achieved even if the victim's objection to it is still present.

3. Conclusion

The Supreme Court's case in 2015, which acknowledged the attempted compulsory extortion, can be regarded as a demonstration of the court's intention to strengthen criminal legal protection for victims of sexual freedom. Yet while the Supreme Court's precedents have long been such a practice of sublimating a clearly punishable act into the scope of a forced act, such as a blitz attack, academic circles still see it as an attitude toward it. The reason that many opinions of academics oppose this attitude is not because of taking a sexual conservative position that does not acknowledge the victimization of surprise attack but because it is clearly defined for assault. The normative meaning of the law should be settled at a universally reasonable level, and the establishment of such normative meaning can not be free from the fact that the general principle of the supplementary principle of the criminal law works. Such freedom is solely owned by legislators.

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