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Scope of the KOREAN School Violence Prevention LAW

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Abstract

In Korea, suicide was caused by school violence and it became a social problem. The school violence prevention law was enacted to allow students to take action on school violence victims, protect students from harm, and resolve disputes between them. The existing system of school violence was able to regulate school violence, but the Act on the Prevention of School Violence was enacted to more effectively protect the victims and prevent school violence. According to the Act on the Prevention of School Violence, each school has its own organization called the Autonomy Committee. Self-governing committees usually conduct school violence prevention activities. In the event of school violence, students should take a neutral standpoint and take initiative measures, protect victims, and make dispute resolution. This is an institution to resolve school violence on its own within the school. However, school violence is a criminal offense, and there is controversy over handling school violence within the school. Especially, there is controversy about the scope of the school violence prevention law.

In this paper, the main contents of the school violence prevention law are reviewed and the scope of the school violence prevention law is clarified as follows.

First, it is the coverage area. According to the School Violence Prevention Act, school violence is violence in and out of school. In other words, it is because school violence can occur not only in the educational activities outside the school but also on the way to and from school. Therefore, it is necessary to interpret it widely based on the relation with the school.

Second, it is human scope. The School Violence Prevention Act stipulates that school violence is a "student-directed" act. If the victim is a student, the law must apply regardless of whether the perpetrator is a student or not.

Third, it is the action to be applied. In the school violence prevention law, school violence uses the notion of criminal law, such as injury and assault, and it should be interpreted independently in judging it, but it should be interpreted same as the concept of criminal law to prevent unified interpretation and confusion.

[Keywords] *School Violence, School Violence Prevention Law, Protection Measure, Self-Government Committee, Leading Measure*

1. Introduction

In Korea, in the 2000s, suicide due to school violence became a social problem. School violence is an act of violence that causes mental and physical harm to a student or takes property, such as assault, inju-

ry, incarceration, incentive, insults, etc., between students[1].

Therefore, the government tried to provide measures for eradicating school violence. As part of the measures, the "School Violence Prevention and Countermeasures Act"(hereinafter referred to as the "School

Violence Prevention Act") was enacted in January 2004[2].

Even before the Act on the Prevention of School Violence was enacted, there was no legal process for solving problems caused by school violence. Disciplinary measures under the Elementary and Secondary Education Act were possible for students who were subjected to school violence and criminal punishment was possible under the Juvenile Act and the Criminal Law. The problem of damages for victims was also made possible by civil law. Despite these measures, the School Violence Prevention Act was prepared so that school violence could lead to serious social problems, leading to student action, protection measures for victims, and adjustment of disputes between victims and victims. In this paper, we review the history and main contents of the School Violence Prevention Act in Korea and clarify the scope of application of the Act.

2. School Violence Prevention Law in Korea

2.1. History

2.1.1. Enactment

The School Violence Prevention Act was enacted on January 29, 2004 and took effect on July 30 of the same year. The same Act provided the establishment of a specialized body to effectively deal with the problem of school violence, regular school violence prevention education, protection of school violence victims, and education of perpetrators.

2.1.2. Revision

As of June 2018, the Act has been amended 22 times since it was enacted. Amendments to the contents of the amendment were made 13 times and nine amendments were due to revisions to other laws. The feature of the amendment of the law is to gradually expand the scope of school violence and to strengthen the protection of victims.

2.2. Main content

2.2.1. School violence procedures

School violence prevention procedures under the School Violence Prevention Act are designed to determine the measures to be taken against victims and students who have been subjected to the deliberation process by holding initial response and case investigation stages and self-governing committees Step, and the decision of the self-governing committee, the principal shall proceed to the step of notifying and implementing the victim and the offending student[3].

2.2.2. School violence measures autonomy committee

The School Violence Measures Committee(hereinafter referred to as the "Autonomous Commission") shall be established for each school in order to consider matters related to prevention and countermeasures against school violence. The self-governing committee usually establishes preventive measures for school violence, protects victims in the event of school violence, leads the victimized students, and coordinates disputes between victims and students. As such, the Autonomous Commission is a key organization that is involved in everything from preventing school violence to decision-making. However, it is pointed out that the autonomous committee established at all elementary, middle and high schools across the country is hardly realistic to appoint experts with knowledge to prevent school violence, and there is a considerable gap between the reality of the unit schools[4].

2.2.3. Leading measure for perpetrated student

The autonomous committee shall be responsible for: i)a written apology; ii)a prohibition of contact, intimidation and retaliation against the student and the complainant or complainant; and iii) IV)community service, v)special education by the experts in and outside the school, iv)suspension of attendance, vii class change, viii transfer, ix)expulsion. The autonomous committee shall give the school principal an opportunity to give opinions to the student and his / her

guardian before making any request for such action.

2.2.4. Protection measure for victim

The autonomous committee shall be responsible for the protection of the victim if:

- i) psychological counseling and counseling by experts within and outside of the school,
- ii) temporary protection,
- iii) treatment for treatment and treatment,
- iv) class replacement, and
- v) You may ask the head of the school for necessary measures to protect you. The Self-Government Committee shall grant the victim and his / her guardian an opportunity to express their opinion before requesting such action. If the student with a disability is a victim, the self-governing body may ask the principal for counseling by a specialist counselor with disabilities or medical treatment of a special treatment institution for persons with disabilities.

2.2.5. Dispute settlement between injured and harmed students

The autonomous committee shall, within one month, arrange for the settlement of any dispute related to school violence, including:

- i) settlement of the settlement of damages between the victim and the student or his / her guardian, and
- ii) can do. When the Self-Government Committee intends to make a dispute settlement, it should notify the student, the student and his / her guardian. This adjustment is not mandatory[5].

3. Scope of School Violence Prevention Law

3.1. Locational scope

School violence is violence in and out of school[6]. In this law, the scope of place is not limited to 'school' but broadly defined as violence is occurring not only at school but also at places other than school such as school, school road, retreat, experiential learning, will be. There is also an opinion that the 'outside school' should be limited to the area close to the school or to the general activities of the school[7].

However, if the intention of this law is to protect the student against the violence against the student, you do not have to. Therefore, in order to judge the scope outside the school, it is necessary not to access the spatial concept of school as educational facility, but to protect the victimized student by broadly interpreting the school violence behavior in relation to school life[8].

3.2. Human application scope

The Act on the Prevention of School Violence revised the scope of human violence for school violence from 'between students' to 'for students'. This is to protect students who are victims of violence by means of school violence when victims are targeted at students. If the perpetrator is a student and the victim is not a student, then Article 5(1) of the School Violence Prevention Act stipulates that "the violation of school violence, the protection of the victimized student, This law is applied except that there are special regulations. "There is also opinion that it is reasonable to apply this law. However, if this view is followed, the scope of school violence will be widened excessively, which may detract from the effectiveness of this law[9].

For example, if the perpetrator is a student, if this law is applied, school violence, such as when a student assaulted a teacher, is also school violence. Therefore, if the perpetrator is a student and the victim is not a student, it may be solved by disciplinary action under the elementary and junior high school education law, juvenile law, criminal law, and civil law.

3.3. Applicable actions

School violence under the School Violence Prevention Law is defined as "the violation of the school violence, which is defined as" the violation of the law, such as injury, assault, detention, intimidation, harassment, attraction, defamation, insult, intimidation, enforced errand and sexual abuse, Or violent information by means of using the body, mind or property accompanied by damage to the refers to. "Bullying" refers to any act that causes two or more students to feel

pain on the other side of the school by constantly or repeatedly physically or psychologically attacking a specific person or a group of students. The "cyber bullying" Using information and communication devices such as the Internet and mobile phones, students conduct all kinds of acts that cause students to constantly and repeatedly make a psychological attack on certain students, or to spread personal information or false information related to a particular student, It says. The School Violence Prevention Act defines school violence and uses the same terms as the constitutional requirements of the law such as injury, assault, detention, intimidation, abduction, incentive, defamation, insult, intimidation and sexual violence. There is controversy as to whether the concepts of requirements are the same.

In this regard, the School Violence Prevention Act has an educational purpose of legislative purposes and the measures against the perpetrators are judged separately from the requirements for the establishment of crimes under penal law in the sense of non-judicial proceedings[10]. In principle, And the concept of school violence prevention should be interpreted in consideration of the entire legal system in the criminal law and the special law on criminal law, There is a view. These two views are different only in terms of expression, but basically we try to grasp the concept of school violence independently according to purpose and purpose of school violence prevention law.

However, even if one considers the purpose of the school violence prevention law to consider the protection and education aspects of the student, it is confusing to use the same concept in criminal law and to grasp the meaning independently[11].

School violence is largely a criminal offense, and criminal penalties and school violence prevention measures are not double punishments. However, using the same terms and understanding them in different meanings may cause the two to make different judgments, and it is not possible to predict the students because they are not clear about what is prohibited[12].

However, in the case of bullying and cyber bullying which are not criminal concept, it is necessary to take a more active protection measure by broadly interpreting it from the viewpoint of the victim student.

4. Conclusion

In this paper, we reviewed the main contents of the school violence prevention law in Korea and its scope of application. In Korea, in 2000s, suicide by school violence occurred several times and became a big problem in society. In order to prevent school violence more effectively, the School Violence Prevention Act was enacted. Since then, the scope of school violence has been enlarged and revisions have been made to strengthen victims' protection measures.

According to the School Violence Prevention Act, when school violence occurs, it investigates the incident in the school and urgently takes action. And the autonomous committee is opened to decide the measures for the victim and the student. According to the decision of the Self-Governing Board, the principal shall notify the student and the students who have been affected. An unfair party may disagree. Thus, in the case of school violence in Korea, measures are taken in accordance with the School Violence Prevention Act rather than first by the criminal justice agencies. Of course, measures taken by criminal justice agencies are not exempted. This is a solution for solving the problem within the school rather than stigmatizing the student first. As such, the Act on the Prevention of School Violence is designed to resolve school violence on its own and effectively prevent it, but its scope is controversial. In this paper, the scope of the school violence prevention is clarified as follows[13].

First, it is the coverage area. According to the School Violence Prevention Act, school violence is violence in and out of school. In other words, it is because school violence can occur not only in the educational activities outside the school but also on the way to and from school. Therefore, it is neces-

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