

Review on Need for Introduction of New Legal Framework of Investigation and Criminal Sanctions for OSH Fatal Accidents

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(Received February 16, 2004; Accepted June 8, 2004)

Abstract : Current OSH system was analyzed in this paper to explain why high fatal incidents and disasters are continuously repeated for recent years in Korea. It was found that we have Dichotomous Perceptual Misconception of prevention before accident and compensation after accident and there is a significant lack of proper feedback reward system for OSH performance. It was assumed that no reduction of accident rate and fatality rate have not been achieved recently despite of a great effort and increased resource allocations. Some statistics for proving weak punishment were analyzed. In the current system, the will of administrative agency would have been very limited particularly in the legal aspects. The Industrial Safety and Health Act is not suitable to after-injury punishment for employer and/or corporate since it is based on a framework for enforcement of prevention. Based on these analyses, it was concluded that there was a need to consider a special law for Corporate Accountability for Fatal Accidents. Because it is necessary to consider seriously for introduction of a new legal system for after injury punishment to repair the current system where it was found lack of proper feedback system. Also, there was no proper sanction measures for corporate with the current OSH legal system, and the most urgent problem in OSH area is the high fatality rate. It is necessary to consider seriously for introduction of a new legal system for after injury punishment. Also, there is no proper sanction measures for corporate with the current OSH legal system, and the most urgent problem in OSH area is the high fatality rate.

Key words: OSH regulation, OHS policy, OSH sanction, After injury punishment

1. Introduction

A series of fatal incidents and disasters has been found an increase for recent years in Korea. It has given rise to an increasing perception that deaths resulting from gross negligence in the exercise of business activities comprise a category of unlawful conduct that has been neglected by the traditional legal system. Despite the availability of incriminating evidence, it has long been recognized that prosecutions have been left to the regulatory authorities or weak level of punishment has been given for a number of fatal industrial accidents. In general, it has been that convictions under Industrial Safety and Health Act are generally perceived as a means of safety guarding workers safety and health rather than as a means of attributing blame and punishing wrongdoers. In fact, enforcement of Industrial Safety

and Health Act has been taken mainly for prevention of industrial accidents and occupational diseases.

For recent years, blame on weak punishment for fatal accidents has been burst from labor sides and some of OSH professionals and a great deal of appeals were made by workers organizations to the regulatory authorities and prosecution body. Although the level of punishment for OSH offences has been raised, in terms of number of cases for prosecutions and the amount of penal fines, it was generally recognized that the level of punishment is still quite weak. The weak punishment has been widely considered due to weak will of the regulatory authorities and prosecution body. Consequently, a large attention has been made on the will of the regulatory bodies. Also, demand for strong punishment and blame for weak punishment have been made to the regulatory bodies. These appeals and suggestions are apparently acceptable. However, the weak punishment is not only the problem of the will of the regulatory bod-

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ies but also a systematic default of the OSH sanctions system. In this article, a discussion on a systematic default of the current OSH sanction system was made. Background and need for introduction of new legal framework of investigation and criminal sanctions for OSH fatal accidents were also discussed.

2. Systemic Fault of Current Osh Sanction Systems

2.1. Dichotomous Perceptual Misconception

Socio-political intervention for OSH has generally approached on the basis of dichotomy of prevention before accident and compensation after accident as shown in figure 1. Policy-making and analysis of OSH intervention also have been made on this frame. This approach is based on the viewpoint that, before an accident highest priority should be set on prevention and after an accident, the number one priority should be set on protection or relief of workers affected by an accident. This overwhelmed concept has led in basically two OSH legal axes in Korea. The current representative OSH laws, one is OSH preventive law called Industrial Safety and Health Act and the other one is workers' compensation law called Industrial Accident Compensation Insurance Act, reflect this concept [1].

Apparently this concept seems to be appropriate. However, in this system, OSH policies and enforcements are intrinsically limited in the legal system of the Industrial Safety and Health Act, i.e. post-accident interventions are not paid attention by both public and regulatory bodies. Thus, this general concept led the governmental interventions mainly in the stage of prevention. Post-accident intervention, such as investigation of gross negligence and punishment of the corporate negligence has been overlooked. Industrial Accident Compensation Insurance Act has been promulgated for the purpose of workers' relief, which is in the intrinsically different dimension of the accident prevention, although some of

the Compensation Insurance Fund can be allocated for the accident prevention. Accident prevention and governmental interventions for OSH is not a relative concept to the post-accident intervention for workers' relief. Also, they cannot be separated by the time framework of pre- and post-accident. They should be covered all the time including pre- and post accident continuously. Therefore, governmental interventions to prevent industrial accidents must include both pre-accident and post-accident stages. In the pre-accident stage, governmental interventions are made by requiring employer to have general duties to prevent industrial accident and to protect workers' health and to take actions which are specified in the regulatory statutes. On the other hand, governmental interventions can be made by investigations of accidents and taking proper actions for punishment and/or sanction measures for the corporate responsibility. Within the above conceptual systems, traditional governmental approaches have limited mainly for preventive stage and post-accident actions by the regulatory bodies have relatively not been active. It is apparent that weak punishment and deficiency of sanction measures are due to the dichotomous concept rather than the weak will of regulatory bodies. Thus, it was analyzed and recognized as one of systemic faults of current OSH systems.

2.2. Wrong Responsive System due to Excessive Legal Compliance Orientation

Ultimate goals of all governmental interventions would be considered for reduction of industrial accidents and occupational diseases and improvement of safety and environmental conditions in the workplace. In terms of input-output model, the OSH interventions are input and output is reduction of accidents and improvement of occupational safety and health. However, governmental interventions for OSH cannot be made directly but they must be exercised indirectly through the industry and employer as shown in figure 2.

This model is though very simple but it implies a very important point to set targets of the governmental interventions. Regulatory enforcement is one of the main measures of governmental interventions. Thus, in the viewpoint of regulatory sides, it is important to increase of the compliances for OSH regulations. However, industrial reactance to the high pressure for enforcement and compliances of OSH regulations, dose not always resulted in preferred output i.e. improvements of OSH in the workplace since industrial reactance are focused on directly compliances of the specification regulations rather than the self OSH activities. In many

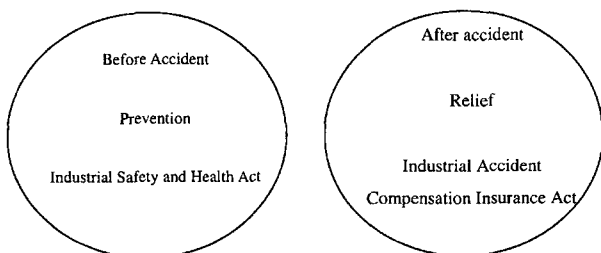


Fig. 1. Schematic representation of Dichotomous Perceptual Misconception of Socio-political intervention.



Fig. 2. Indirect Model of Input of OSH intervention and Output of Goals.

cases, industry tends towards just compliances when the regulatory body tries to increase the enforcement of OSH regulations. It is considered to be resulted from the fact that OSH inspections are generally conducted only to check out whether industries are in compliance or in non-compliance and proper sanctions are not made based on performance. In this system, industry cannot but comply with the legal requirements themselves. It is basically desirable for industry to be in good compliance. However, as it is well known, legal requirements are generally considered as minimal rather than ideal. Governmental interventions should be to push and to lead industry to actively take proper actions for accident reduction and improvement of OSH. However, industry reacts just to be in compliance since it was required whenever it was strengthened. OSH inspections and sanctions are made by checking compliance and non-compliance rather than the performance which is the ultimate output to be pursued.

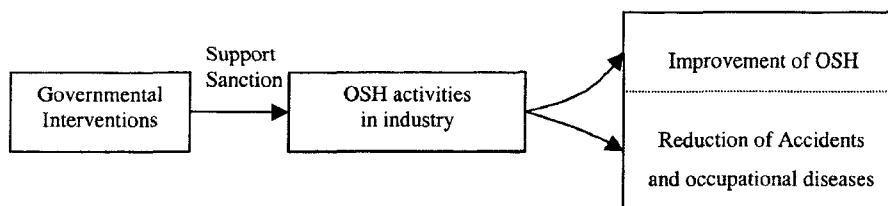
Figure 3 schematically represents the ideal and practical governmental intervention models. As discussed earlier, figure 3A shows ideal model. In this model, governmental interventions promote the OSH activities in industry and this resulted in reduction of accidents and improvement of OSH. In reality, it has been found

that industries responses to the governmental interventions are only for compliance with the specification requirements with negative passive attitude. Therefore, governmental interventions are not successful to lead industries to promote proactive OSH practices which are believed an essential key to achieve accident reduction and improvement of OSH as shown in figure 3B. This phenomenon is also considered as one of systemic faults of current OSH systems.

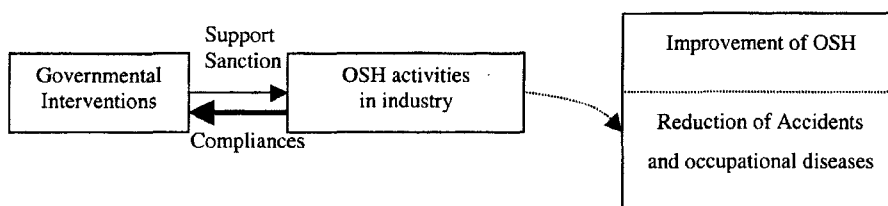
3. Evidence of Systemic Fault of Current Osh Systems

3.1. High Fatality Rate of Industrial Accidents

The fact that we have been suffered from high industrial accidents rates and especially high fatality rate is beyond dispute. Arguments whether there are systemic faults in the current OSH systems are always raised from these unfavorable results. The statistics, as shown in figure 1, demonstrate that the current system is not properly functioning to reduce the accident rate and fatality rate [2]. For recent years, decrease trends of accident rates and fatality rates are shown smaller and are getting stagnating. In the year of 2002, the fatality rate based on 10,000 workers was 2.46, which is an extremely high



A. Ideal model of governmental interventions for OSH.



B. Wrong responsive model to governmental interventions for OSH.

Fig. 3. Schematic Model for Governmental Interventions According to the Response of Industry.

Table 1. Some of Industrial Accident Statistics from 1992 to 2002

Year	Accident Rate	No. of Injured	No. of Death	Fatality Rate*
1992	1.52	107,435	2,429	3.44
1993	1.30	90,288	2,210	3.18
1994	1.18	85,948	2,678	3.68
1995	0.99	78,034	2,662	3.37
1996	0.88	71,548	2,670	3.27
1997	0.81	66,770	2,742	3.33
1998	0.68	51,514	2,212	3.92
1999	0.74	55,405	2,291	3.08
2000	0.73	68,976	2,528	2.67
2001	0.77	81,434	2,748	2.60
2002	0.77	81,911	2,605	2.46

*Fatality rate based on 10,000 workers.

**Source: Ministry of Labor

level compared with those in other countries. In addition, these high rates are continued for many years. Thus, it is necessary to recognize that the high level of industrial accident rates is not a transitory problem but a structural fault, i.e. systemic deficiency in the current OSH regulatory system.

2.2. Weak Punishment Levels

Legal sanction for OHS offenders is one of the major and strong measures to deter the undesirable industrial accidents. This is particularly important for the fatal

accidents due to gross negligence. However, it is clearly seen by reviewing the criminal statistics that the level of punishment for fatal accidents has been extremely weak. Restraint for offenders itself does not reflect directly the level of punishment but it has been treated as an index of the level of punishment. Also restraint has been known as a marker reflecting the will of regulatory bodies for a strong punishment. Therefore, it is meaningful to compare the statistics of restraint for offenders with the number of deaths from industrial accidents.

Table 2 shows the number of prosecutions and restraints for offenders of the Industrial Safety and Health Act from 1986 to 2001 [3]. The total number of deaths has been increased and the number of prosecutions has been dramatically increased for last decades, however, the number of restraints reversely has been decreased. Recently, the ratios of restraints to the prosecutions show less than 1%. This implies that regulatory bodies are reluctant to take strong punishment for offenders.

In the prosecution stage, it is clearly seen that punishment level is very weak as shown in the Table 3. In the year of 2000, the total number of 8,379 cases was prosecuted for offenders of Industrial Safety and Health Act by the Public Prosecutors [3]. Only 5 offenders were restrained among 8,379. The cases of 8,352 among 8,379 (99.7 %) were disposed the summary disposition without a public trial. As well known, the summary dispositions are taken when the cases are considered insignifi-

Table 2. Number of Prosecutions and Restraints for Offenders of Industrial Safety and Health Act from 1986 to 2001

Year	No. of deaths(A)	No. of prosecutions(B)	Restraint			No. of non-restraint
			No.(C)	C/B (%)	C/A (%)	
1986	1660	466	29	6.2	1.7	437
1987	1761	374	50	13.4	2.8	324
1988	1925	630	54	8.6	2.8	576
1989	1724	495	22	4.4	1.3	403
1990	2236	967	25	2.6	1.1	942
1991	2299	1514	17	1.1	0.7	1497
1992	2429	-*	-*	-*	-*	-*
1993	2210	2398	37	1.5	1.7	2361
1994	2678	3134	7	0.2	0.3	3127
1995	2662	6099	15	0.2	0.6	6084
1996	2670	7297	8	0.1	0.3	7289
1997	2742	3072	41	1.3	1.5	3031
1998	2212	5692	7	0.1	0.3	5685
1999	2291	6468	5	0.1	0.2	6463
2000	2528	9084	47	0.5	1.9	9037
2001	2748	7545	61	0.8	2.2	7484

*Data missing in the Yearbook of Supreme Public Prosecutors' Office

**Source: Yearbook of Supreme Public Prosecutors' Office

Table 3. Disposition by the Public Prosecutors for Offenders of Industrial Safety and Health Act in the year of 2000

Disposition	Cases
Total	9065
Prosecution	8379
Restrains	5
Non-restraint	22
Summary disposition	8352
Non-prosecution	639
discharge of suspicion	246
Stay of prosecution	290
No right of arraignment	62
Drop of prosecution	18
Drop of witness	7
Dismissal	16
Others	47

*Source: Yearbook of Supreme Public Prosecutors' Office

cant. It is easily assumed that the punishment level is quite weak for the summary disposition.

This argument is proven by the judicial decision data by the Court of First Instance for the prosecuted due to offences of Industrial Safety and Health Act in the year of 2000 as shown in Table 4. Only 2 cases (2%) were imprisoned among 99 cases. Twenty seven cases (27 %) were disposed the stay of execution and sixty seven cases (67%) were disposed the penal fines. It is apparently clear that these punishment levels are weak considering the number of deaths due to fatal industrial accidents [4].

Table 4. Judicial Decision by the Court of First Instance for the Prosecuted due to Offences of Industrial Safety and Health Act in the year of 2000

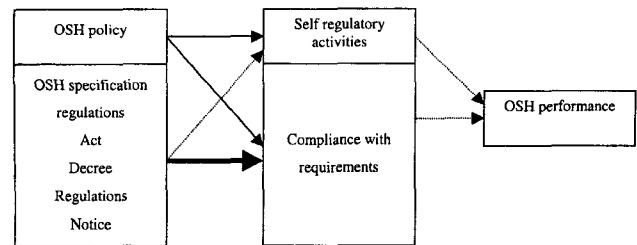
Disposition	Cases
Total	129
Judicial decision	99
Lifetime imprison	0
>10 yr imprison	0
>5 yr imprison	0
>3 yr imprison	2
>1 yr imprison	0
<1 yr imprison	0
Stay of execution	27
Penal fines	67
Probation	2
Not guilty	1
Others	20

* Source: Yearbook of Supreme Court

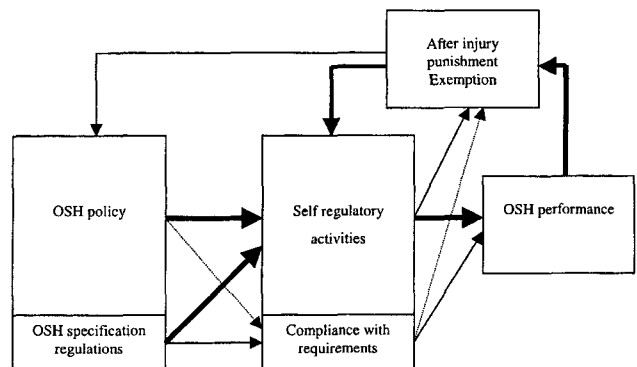
4. New Framework: Post-Accident Sanctions

Debate about the weak punishment level for offenders of OSH regulations is not for retributive punishment but for securing occupational safety and health through deterrence effects of criminal punishment. Obviously, the objective of the argue on the retrospective punishment in this article is to achieve to reduce industrial accidents and to maximize the OSH activities inside industry by detain the trend in most jurisdictions away from the use of criminal sanctions to enforce OSH obligations. As discussed earlier, OSH regulation bodies have appeared to focus on prevention rather than after the injury prevention punishment based on the assumption that retrospective punishment does not play a role in proactive prevention. However, it has been found increased concern about the retrospective punishment can play a greater role stimulating compliance efforts in many countries [5-7].

In this article, the OSH current system can be expressed in a simplified model as shown in figure 4A. In this model, more constructive responses fail since there is no proper feedback system to reward each industry for their self OSH activities and efforts both negatively and positively. Due to this lack of the feedback system, social and governmental interventions do



A. Current OSH system Model.



B. Proposed Ideal Model.

Fig. 4. Schematic representations for current OSH Systems Model and Proposed Ideal Model.

not work to stimulate self- proactive role inside industry. An ideal model was proposed to repair this system as shown in figure 4B. There is no doubt that strong retrospective punishments would play a significant part in OSH enforcement and proactive efforts in the workplace.

5. Conclusion

Current OSH system was analyzed and it was found that there is a significant lack of proper feedback reward system for OSH performance. It was assumed that no reduction of accident rate and fatality rate have not been achieved recently despite of a great effort and increased resource allocations. Recently the Korean Ministry of Labor (MOL) demonstrated its determination to proceed with prosecutions despite of difficult circumstances and showed a strong will for increase the level of after injury punishment. However, it is still something to be skeptical about since the system has not been changed. In the current system, the will of administrative agency has very limited particularly in the legal aspects. As mentioned earlier in this article, the Industrial Safety and Health Act is not suitable to after-injury punishment for employer and/or corporate since it is based on a framework for enforcement of prevention. Therefore, it is necessary to consider seriously for introduction of a new legal system for after injury punishment. Also, there is no proper sanction measures for corporate with the current OSH legal system, and the most urgent problem in OSH area is the high fatality

rate. Consequently, it is concluded that there is a need to consider a special law for Corporate Accountability for Fatal Accidents.

Acknowledgement

This Research was financially supported by Hansung University in the year of 2001.

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