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Study on the Application of the Serious Accidents Punishment Act in Construction Sites and Practical Improvement Measures for Legal Deficiencies

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Abstract

This study analyzed the practical issues in the Serious Accident Punishment Act (SAPA) for construction sites and proposed measures to improve provisions that are detached from reality. The Act aims to prevent major accidents across various industries, with a particular emphasis on the construction sector. While the Act's intention is commendable, several significant legal flaws have emerged during its implementation. These issues were critically analyzed and strategic recommendations were proposed. Key issues include ambiguous legal definitions, the differential impact of the law on small and large businesses, and the increased administrative and managerial burdens. This study proposed specific measures to enhance the clarity of legal terminology and technology, balance the responsibilities between small and large businesses, and streamline administrative processes. Additionally, methods for effectively revising the regulations and reasonably complying with them on-site were proposed. By addressing these issues, we aim to improve the effectiveness of the law, ensure fair application, and ultimately create a safer working environment in the construction industry. The recommendations are expected to serve as valuable resources for future revisions and improvements to SAPA and contribute to the broader goal of sustainable industrial safety and development.

Keywords: *Serious Accident Punishment Act (SAPA), Small and Medium-sized Enterprises (SMEs), Legal Deficiencies, Improvement Measures*

1. INTRODUCTION

The Serious Accident Punishment Act (SAPA), implemented in January 2022, was enacted to prevent major

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accidents and protect worker safety across various industries, including the construction sector. According to J. J. Lee et al.'s study, in the 2022 data on the status of industrial accidents published by the Ministry of Employment and Labor, the total number of deaths from all industrial accidents was 874. Of these, 402 deaths occurred in the construction industry, accounting for 46% of the total [1]." The number of deaths due to industrial accidents rose by 143, reaching a total of 2,223 in 2022, compared to 2021. Out of these, 874 were caused by accidents rather than illnesses, and 80.9% (707) occurred in workplaces with fewer than 50 employees [2]. In SAPA, "serious accidents" encompass not only incidents occurring at industrial sites (such as factories or construction sites) but also "public" disasters resulting from defects in the design, manufacture, installation, or management of products, product components, public facilities, and transportation. SAPA holds business owners, executives, and corporations or institutions that fail to ensure operational safety criminally liable.

In cases of intentional illegal acts or gross negligence, SAPA can impose punitive damages of up to five times the actual damages. SAPA is a comprehensive law that imposes a duty on business owners and responsible managers to ensure safety and health, with strengthened penalties for violations. The law's application is especially crucial in the construction industry, where the risk of accidents is high. However, during its implementation, certain legal shortcomings unsuitable for construction sites have emerged [3]. To better understand the Serious Accident Punishment Act (SAPA), we will begin by examining the legislative background and then compare it with similar laws from other countries. This comparison will help in identifying effective response strategies for SAPA. We will explore the potential for minimizing risks from the perspective of corporate managers, and specifically, we will review industrial safety management strategies at the small and medium-sized enterprise (SME) level [4].

2. PREVIOUS STUDIES

Numerous studies have been conducted on the introduction and impact of the Serious Accident Punishment Act (SAPA). Firstly, research analyzing the accident prevention effect through strengthened legal responsibilities has been evaluated as contributing to raising awareness of responsibility among corporate executives. Secondly, studies related to the scope of the law have pointed out ambiguities, particularly addressing issues in its application to the construction industry. Thirdly, there are studies indicating that small and medium-sized enterprises (SMEs) experience greater difficulties in complying with the law compared to large corporations. These studies emphasize the need for clarification of legal provisions and support for SMEs. Based on these prior studies, this paper aims to analyze the legal shortcomings at construction sites on a clause-by-clause basis and propose improvement measures. Specifically, the paper focuses on clarifying the scope of application, defining accidents more clearly, delineating the limits of managerial responsibility, suggesting differential application based on company size, and alleviating administrative burdens. Through this, the Serious Accident Punishment Act (SAPA) aims to practically improve safety at construction sites and propose a balanced approach that does not hinder the sustainable development of the construction industry.

This study will serve as important foundational material for the revision and supplementation of SAPA. The law was influenced by the UK's "Corporate Manslaughter and Corporate Homicide Act" of 2007, but the Korean law differs significantly. Unlike the UK law, which targets corporations, SAPA primarily focuses on individual business owners and managerial personnel, emphasizing their duty to ensure safety and health.

Moreover, unlike the Industrial Safety and Health Act, SAPA imposes extensive obligations on managerial personnel and plans to enforce strict penalties for violations of these obligations [5]. Following the example of the UK, SAPA punishes business owners, CEOs, and corporations for fatal accidents occurring at their workplaces or institutions due to the failure to implement safety and health measures. The enactment of SAPA was marked by a legislative process involving debates between civic groups, who voiced urgent concerns and petitions on behalf of victims of industrial and public disasters, and businesses, who were concerned about a potential decline in industrial competitiveness due to additional costs [6]. The duty to ensure safety and health under the Serious Accident Punishment Act (SAPA) is distinct from the safety and health obligations under the Industrial Safety and Health Act. Unlike similar laws in the UK and Australia, which also rely on the obligations of the

Industrial Safety and Health Act, SAPA imposes a separate duty. This duty is akin to the "due diligence" obligation of officers in Australia, focusing on the managerial and supervisory responsibilities of executives and other management personnel. However, a key difference is that SAPA's obligations are contingent on the occurrence of a serious accident for punishment, whereas the obligations under the Industrial Safety and Health Act do not require a serious accident to trigger penalties [7]. The conditions for establishing criminal liability vary by country. In 2007, the UK became the first country in the world to establish corporate criminal liability for fatal accidents with the enactment of the Corporate Manslaughter and Corporate Homicide Act. In the UK, individual punishment for industrial accidents is governed by the Health and Safety at Work Act and the criminal code, which applies gross negligence manslaughter. The Corporate Manslaughter Act, however, applies exclusively to corporations, not individuals. For a corporation to be convicted of corporate manslaughter, a fatal accident must occur, and there must be a proven breach of a relevant duty of care by the corporation that led to the death [8]. J. O. Park, in analyzing the effectiveness of the Serious Accident Punishment Act (SAPA), used a game-theoretical approach to argue that stricter penalties do not necessarily lead to a reduction in accidents.

The study explored the interactions between employers and employees, examining how both parties' behaviors influence accident occurrences. By analyzing SAPA's effectiveness through game theory, Park highlighted that merely increasing penalties does not guarantee a decrease in accidents. The study emphasized the need for not only strengthening legal responsibilities but also enhancing safety education and improving management systems, considering factors such as the adjustment of attention levels, substitutability, and the impact of penalties on both employers and employees [9]. K. S. Baeck et al. regarded construction industry accidents as corporate crimes, discussing issues and improvements related to the expansion of the Serious Accident Punishment Act (SAPA). They emphasized the need for stricter penalties and increased support for small and medium-sized enterprises (SMEs), arguing for the importance of enhancing penalty severity and introducing effective fines. They highlighted that non-compliance with corporate safety and health obligations constitutes an organizational crime [10].

3. KEY PROVISIONS OF THE SERIOUS ACCIDENT PUNISHMENT ACT (SAPA)

The Serious Accident Punishment Act (SAPA) was enacted to protect the lives and health of workers and reduce serious accidents. It holds business owners and managerial personnel accountable in the event of an

accident and strengthens measures to prevent such incidents. The act aims to improve overall workplace safety, reduce the occurrence of serious accidents, and ensure accountability for safety and health violations across various sectors. The main provisions are as follows.

3.1 Scope and Application:

SAPA applies to business owners, executives, and corporations across various industries, including construction, manufacturing, and public services. The law targets both industrial accidents and public disasters caused by defects in the design, manufacture, installation, or management of products, components, facilities, and transportation.

3.2 Duties and Responsibilities:

- (a) **Business Owners and Executives:** The law imposes a duty on business owners and executives to ensure the safety and health of workers and the public. This includes implementing and maintaining safety measures, conducting regular inspections, and providing necessary training.
- (b) **Corporations:** Corporations are held accountable for failing to prevent serious accidents and must establish comprehensive safety management systems.

3.3 Criminal Liability:

- (a) SAPA introduces criminal liability for serious accidents, imposing severe penalties on business owners, executives, and corporations found negligent in fulfilling their safety and health obligations. This includes imprisonment and fines.
- (b) The law specifies that both individual and corporate entities can be held liable, with a particular focus on managerial responsibility.

3.4 Punitive Damages:

In cases of intentional or grossly negligent acts leading to serious accidents, SAPA allows for punitive damages of up to five times the actual damages, adding a significant financial deterrent.

3.5 Differentiation from Other Laws:

Unlike the Industrial Safety and Health Act, SAPA's obligations and penalties are contingent on the occurrence of a serious accident. It specifically targets failures in managerial oversight, emphasizing the role of executives and other management personnel in preventing accidents.

3.6 Special Considerations for SMEs:

The law acknowledges the challenges faced by small and medium-sized enterprises (SMEs) and includes provisions for supporting these businesses in complying with safety regulations.

3.7 Enforcement and Compliance:

SAPA mandates strict enforcement and compliance measures, including regular audits and inspections by relevant authorities. The law also outlines the procedures for investigating and prosecuting violations.

4. MEASURES TO SUPPLEMENT AND IMPROVE LEGAL PROVISIONS DETACHED FROM THE REALITY OF INDUSTRIAL SITES

The Serious Accident Punishment Act (SAPA) consists of 17 articles. Although it was introduced with the intention of strengthening industrial safety, several issues have emerged due to its detachment from reality. In particular, construction sites face difficulties in ensuring effective safety due to the ambiguity of the law's provisions and challenges in practical application. The law's provisions do not adequately reflect real-world situations, leading to confusion in the field regarding its implementation. This lack of clarity extends to the responsibilities of corporate executives, resulting in practical confusion. "Legal imperfections" means incomplete or unclear parts that may arise in law or regulation. These deficiencies can lead to confusion or unexpected differences in interpretation in the implementation of the law, and can manifest when the scope of legal liability is unclear or lacks consistency. Deficiencies can prevent the full attainment of the purpose of the law, and are likely to impede fairness and effectiveness in the law enforcement process; therefore, finding and remedying legal deficiencies is critical to enhancing the effectiveness of the law and enhancing its legal stability.

Various researchers have pointed out the problems with the law. For example, J. Y. Kim highlighted several issues with SAPA, including the unclear regulations regarding the content of the duty to ensure safety and health, as well as the scope of the persons obligated to comply. Additionally, the severity of the penalties is considered excessively high, potentially not aligning with the legislative purpose of preventing industrial accidents. Furthermore, the exclusion of workplaces with fewer than five employees, where serious industrial accidents frequently occur, has been criticized [11]. Y. K. Kim discussed the direction for corporate safety and health measures and the role of the government in building a social safety net. He argued that punishment alone is not the best solution for significantly reducing serious accidents. Instead, he emphasized the importance of preventive measures, such as strengthening safety and health measures, as well as active efforts to prevent recurrence and reduce additional damage. Kim highlighted the need for a comprehensive approach that goes beyond penalties to include proactive safety practices and government support to create a safer working environment [12].

In this section, we will list the provisions of the law sequentially and denote "A: legal deficiencies " and "B: improvement measures" for each, to indicate the identified issues and proposed solutions.

4.1 Article 1 (Purpose)

The purpose of this law is to prevent serious accidents and protect the lives and physical well-being of citizens and workers by stipulating the punishment of business owners, managerial personnel, public officials, and corporations that cause human casualties by violating safety and health obligations while operating businesses, workplaces, public facilities, and public transportation, or handling harmful raw materials and products.

4.2 Article 2 (Definitions)

A: The expression "a person who has the authority and responsibility to represent and oversee the business" is overly broad, making it difficult to identify who the managerial personnel are within the actual corporate structure.

B: Clear criteria should be provided to specifically define the scope of managerial personnel. For example, a more specific and clear definition could be "a member of the board of directors with the authority to determine specific departmental or company-wide strategies and operations." Additionally, regulations could be added that require companies to clearly document the roles and responsibilities within the organization.

4.3 Article 3 (Scope of Application)

A: There is an issue of fairness in the application of the law. The life and safety of workers are fundamental rights that should be equally protected regardless of the size of the workplace. Differentiating the law's application based on the size of the business may lead to violations of the right to equality.

B: The scope of the law should be expanded to ensure that all workers are equally protected. This can be achieved by minimizing the exceptions in the law's applicability and amending it to include appropriate safety and health regulations for small businesses as well.

4.4 Article 4 (Duties of Business Owners and Managerial Personnel to Ensure Safety and Health)

A: The term "safety and health management system" is vague. It is unclear what level of system companies must establish to be considered as having fulfilled their legal obligations.

B: The law should clearly define "safety and health management system" and specify its essential components. For instance, it should require the inclusion of key elements such as the establishment of a safety and health policy, risk assessment, safe work procedures, emergency response plans, training and education, and performance monitoring. These specifications will provide clear guidance to companies on how to comply with their legal duties.

4.5 Article 5 (Duties to Ensure Safety and Health in Contract, Service, and Outsourcing Relationships)

A: The scope of responsibility for the principal contractor is unclear, making the standards for fulfilling legal obligations ambiguous.

B: The responsibilities of the principal contractor should be clearly defined and specified. For example, the law should outline the basic safety measures that the principal contractor must ensure for subcontractors, providing concrete examples and standards. Specific actions such as conducting workplace safety inspections, providing safety training, supplying protective equipment, and performing risk assessments should be included in the legal provisions. This clarity will help in holding the principal contractor accountable and ensuring consistent safety practices across all contracted relationships.

4.6 Article 6 (Punishment of Business Owners and Managerial Personnel for Serious Industrial Accidents)

A: The severity of the punishment is excessive. A minimum of one year imprisonment and fines of up to 1 billion KRW are significantly higher compared to other laws and can be particularly burdensome for small and medium-sized enterprises (SMEs). While there is a minimum sentence, there is no upper limit. There should be a specified maximum duration for imprisonment.

B: The level of punishment should be reviewed and adjusted to a reasonable range. For example, the minimum sentence for imprisonment could be lowered, or the upper limit of fines could be adjusted. Additionally, a system of differentiated punishment levels based on the size of the company and the severity of the violation could be introduced to alleviate the burden on SMEs.

4.7 Article 7 (Joint Penal Provisions for Serious Industrial Accidents)

A: While corporations or institutions are held responsible for substantial control and management, they can be exempted from liability if they have not neglected their duty of care and supervision. This creates potential loopholes for avoiding responsibility.

B: The scope of exemption clauses should be narrowed, and the duty to take preventive measures should be clearly defined. This would ensure that substantial safety management is effectively implemented and that corporations cannot easily avoid liability by claiming they fulfilled their duty of care without actually ensuring safety measures are in place.

4.8 Article 8 (Completion of Safety and Health Education)

A: The requirements for completing safety and health education, including the target audience and content, are not clearly defined.

B: The law should clearly specify the content of the education and the individuals required to undergo it. Additionally, an accreditation system should be established to certify the completion of the education, thereby enhancing its effectiveness and ensuring that all necessary participants receive adequate training.

4.9 Article 9 (Duties of Business Owners and Managerial Personnel to Ensure Safety and Health)

A: The duties of business owners are broadly defined, making it challenging to delineate specific areas of responsibility.

B: The law should clearly outline the scope of responsibilities and specify detailed management obligations according to different risk factors. This would clarify the accountability of business owners and ensure that specific responsibilities are well understood and properly managed.

4.10 Article 10 (Punishment of Business Owners and Managerial Personnel for Serious Public Accidents)

A: The punishment provisions for serious public accidents do not effectively lead to preventative measures.

B: Instead of focusing solely on post-accident punishment, the law should impose stringent obligations for preventative measures. Strong penalties should be enforced for violations of these preventative duties to enhance the law's deterrent effect and promote proactive safety measures.

4.11 Article 11 (Joint Penal Provisions for Serious Public Accidents)

- A:** The conditions for exemption from liability in cases of serious public accidents are unclear, making it difficult to hold corporations accountable.
- B:** The law should clarify the conditions for exemption and explicitly strengthen the preventive and management obligations of corporations. This will ensure clear accountability and make it easier to establish corporate responsibility in the event of a serious public accident.

4.12 Article 12 (Notification of Confirmed Sentences)

- A:** There is a lack of specific regulations regarding the notification procedure and timing, as well as insufficient guidelines for subsequent actions following the notification.
- B:** The law should clearly define the timing and procedure for notifications and establish specific guidelines for the actions that relevant agencies should take following the notification. This will ensure a consistent and coordinated response in handling the outcomes of confirmed sentences.

4.13 Article 13 (Disclosure of Serious Industrial Accident Occurrences)

- A:** There is a lack of clear regulations regarding the criteria and procedures for disclosure, which may reduce the effectiveness of the disclosure process.
- B:** The law should clearly define the criteria for disclosure and detail the methods and scope of disclosure. This will enhance the fairness and transparency of the process, ensuring that the information is communicated effectively and appropriately.

4.14 Article 14 (Special Provisions for Judicial Procedures)

- A:** There are insufficient specific measures for the protection of victims, and the criteria for the designation of experts are vague.
- B:** The law should establish clear regulations for victim protection measures and specify the criteria for the designation of experts. This will help ensure a fair trial process and provide appropriate support for victims throughout the judicial proceedings.

4.15 Article 15 (Liability for Compensation)

- A:** The criteria for calculating the amount of compensation are unclear, and there may be disputes regarding the limits of compensation.
- B:** The law should provide specific criteria for determining the amount of compensation and reevaluate the appropriate limits of compensation based on the extent of the damage. This will help protect the rights of the victims and ensure fair compensation.

4.16 Article 16 (Government Support and Reporting for Business Owners)

- A:** The scope and method of government support are not clearly defined, and the specifics of the reporting requirements are lacking.
- B:** The law should specify the scope and methods of government support and clarify the detailed aspects of the reporting requirements. This will enhance the transparency and accountability of the policies, ensuring that they are effectively implemented and monitored.

CONCLUSION

In this paper, we examined the Serious Accident Punishment Act (SAPA), an important legal measure enacted to protect the safety and health of workers, and highlighted various shortcomings and discrepancies that arise when applying it to construction sites. We also proposed potential improvements. The primary issues include the ambiguity and lack of clarity in the legal provisions, making compliance challenging for companies. To improve the law, it is necessary to clarify legal terms and definitions, specify the scope of responsibilities, reassess the severity of penalties, introduce differential application based on company size, adopt a prevention-focused approach, strengthen education and support, and enhance fairness and transparency. These improvements can increase the effectiveness of the law and improve compliance rates among companies. It is also crucial to encourage active participation and cooperation from companies. Simply revising legal provisions is not sufficient; a practical approach that considers the realities of industrial sites and a long-term effort to establish a safety culture are essential. Creating an atmosphere of cooperation among the government, companies, and workers is vital, recognizing the importance of safety. There needs to be a flexible approach to continuously monitor and address issues arising during the law's implementation. Continuously gathering input from industrial safety experts, legal professionals, and field practitioners is essential to enhance the law's effectiveness. Ultimately, improvements to SAPA should strike a balance that protects workers' safety and health without undermining corporate competitiveness. This balanced approach will help create a safer working environment and contribute to the nation's economic development.

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