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Gender Perspective Analysis on Korean Labor Law

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Ⅰ. Introduction

The labor law regulates the living conditions related to the provision of labor to enable workers to live a humane life in a capitalist society. Its underlying principle and purpose is to actualize the “humane life of workers.” The labor law is an important means of realizing women's equal labor rights because it has the power to determine how the economic and social forces surrounding labor relations are reflected in the lives and experiences of working people. In Korea, the Labor Standards Act enacted in 1953 includes a clause on equal treatment. In 1987, the former Equal Employment Act was enacted. With the enactment, gender equality became an important value of labor law and began to take a stand as an area for regulation. However, despite these legislative efforts, it is difficult at the present to say that the labor law has contributed positively to the realization of gender equality. Although the female employment rate has risen by 2.0% since 2000, to 50.9% (2018), the figure is still far below the 70.8% male employment rate.

The gender gap in the quality of employment has not narrowed either; 33.2% of male workers are non-regular workers while the proportion of non-regular workers is 50.7% for women. The wage gap between genders is 33.4% (2018), which is among the lowest level among OECD countries. Given the significant gender gap in the size, quality of employment, and working conditions, we cannot help but wonder whether Korean labor law is doing anything to achieve gender equality.

Against this backdrop, this study aims to critically examine and seek ways to improve the labor law's contribution to the realization of gender equality in the workplace. So far, research and discussion on gender equality in labor law have been focused on the Equal Employment Act. On the other hand, very few studies have examined the impact that the legislation stipulated by the labor law has had on the gender gap. As the problems of non-regular workers, such as the formation of internal labor market structure, short-term labor, and special employment, overlap with gender discrimination in both employment and task designations, the Equal Employment Act alone is facing limitations in resolving the gender differences in the labor market. The current labor law is being only partially applied in terms of normative and factual matters to small-scale businesses and non-regular workers. This is because it is difficult to treat such issues as employment discrimination under the Equal Employment Act. Therefore, it is necessary to identify the reasons why the Labor Standards Act, the Trade Union and Labor Relations Adjustment Act, and the Occupational Safety and Health Act do not contribute to the protection of female workers and their rights. There is also need to correct and supplement the acts in legal and policy terms. This is a gender-sensitive analysis of labor law in that it examines the

impact of labor law on genders and gender gaps, and seeks ways to improve the current legislation.

Secondly, it can be pointed out that the existing 'women's labor law' or discussion on gender equality of the labor law developed with the sole focus on the role and improvement plan of the Equal Employment Act. This is because the employment discrimination law is only a starting point and a means for achieving gender equality. The feminist debate on gender equality has been based on the question of how to overcome the "Wollstonecraft dilemma." The concept of equality as equals is embodied in laws prohibiting discrimination in hiring, promotion, and wages. However, social differences such as burdens of family care and biological differences such as pregnancy and childbirth have resulted in women having to put in much effort in both the home and the workplace, almost to the point of exploitation in both places. The concept of equality as difference has been embodied in policies such as maternity protection, active measures, and policies for work-life balance. But this concept has the limitation of "reproducing the marginalized status of women in a patriarchal order." Given this debate, gender equality should be defined as “the deconstruction of unequal social organizational logic, ie, gender discrimination structures, including hierarchical gender roles, gender identity, gender status and norms.,” Gender equality ultimately changes the masculine and hierarchical social operations and gender order and aims to "transform" gender roles and resource distribution rules. However, gender equality should be viewed as “different yet equal, the strategic frame of transformation is not phased, it is both synchronic and synonymous, and a mix of policies that can be introduced at any time in different societies.” Considering this complex discussion on gender

equality, the legislation of the labor law for the realization of gender equality should not be limited to the Equal Employment Act, which only represents the ‘same yet different’ frame. Analysis and efforts for improvement should be made on whether labor law contributes to increasing gender inequality and hierarchy in the labor sector, and how gender-based perspectives can be reflected in the existing labor law to dissolve and transform inequality. A study by Lee Ju-hee (2012) suggests that short-term labor revitalization policies will solidify women's low status in the labor market, induce women's marginalization, and ignore the gender-based discrimination effects of general labor market policies such as the minimum wage system. She criticized the limitations of the existing women's employment policy locked in the ‘different yet same’ frame. Her conclusions suggest the need for analyzing the effects of general labor policies and laws on gender and the need to reflect such analysis in policy alternatives. Therefore, based on the premise that gender equality is an important value and area for legislation in the labor law, there is need to analyze the gender impact of major labor laws. Further research should be done on how to improve the labor law to realize gender equality, including the dissolution and transition of the gender hierarchy itself.

The purpose of this study is as follows:

- Critically review key labor laws in terms of gender equality
- Suggest improvement measures based on a critical review of the labor law
- Create a network of relevant entities and experts both in Korea and abroad to involve them in the process of discussing gender equality in the labor law

Ⅱ. Labor Standards Act

After reviewing the Labor Standards Act, this study concluded that improvement of the working time regulations was needed to bridge the gender gap in working hours and wages. This is because male-oriented long-time and female-oriented short-time work reflect the structure of gender inequality in the family and at work, and the current labor law is designed to promote this. In order to improve gender equality of working hours, it is necessary for both men and women to work for shorter working hours and to be guaranteed the right to change working hours. In order for short-time work not to be permanently fixed as an aspect of female employment, statutory working hours must be continuously reduced and stable and high-quality short-time jobs must be increased through the right to reduce working hours. In this aspect, the provisions of the current right to shorten working hours for family care were reviewed. The present provisions of the right to shorten working hours have been found to have a number of restrictions on the reasons for application, shortened work time and duration of application. Workers should be able to change their working hours freely according to life cycle needs. With such rights, the problem of long working hours can be alleviated and the current working system can be restructured into a gender equal one.

Partial application of the Labor Standards Act for "marginal" part-time and zero-hour contract workers and other blind spots that the law does not address illustrates the limitations of current working time regulations, modeled on full-time men who work long hours. Women take up a large proportion of marginal part-time or zero-hour contract workers. This affects the gender wage gap and lower employment quality. Therefore,

this study examines the necessity of restricting the application of labor law and social security law to marginal part-time workers, and proposes improvement in consideration of the purpose and contents of each legislation. It was also taken into account that the exemption laws resulted in the abuse of marginal part-time labor contracts. Regarding the zero-hour contract workers, the debate on the work status of such workers was recognized. Additionally, difficulties in applying regulations of weekly, annual, and leave allowances for zero-hour contract workers were identified. Improvements are needed such as amending relevant laws or distributing guidelines on the interpretation of related laws.

Ⅲ. Industrial Relations Act

1. Gender Issues of Industrial Relations Act

A. Subjects of Application

The Trade Union and Labor Relations Adjustment Act (the "Trade Union Act," for short) guarantees the rights of workers to organize a trade union and to be exempted from civil and criminal liabilities arising from union activities and disputes. However, workers who do not fall under the legal definition of a "worker" cannot be protected by the Trade Union Act. In this regard, the law reveals the problem of being unable to encompass a new employment type of non-regular workers, including special-type workers. In relation to the judgment of the nature of a worker in the Trade Union Act, the Labor Standards Act has a different purpose of legislation and definition of the concept of a worker. Considering this difference, an opinion was strongly presented that "because collective labor relations laws simply stipulate for creation of

private autonomy (regulation of opportunities and procedures) so as to realize private autonomy, such difference in the user of rights can be justified, and a worker prescribed in the Trade Union Act includes not only a person who has a dependent nature in the labor-providing process but also a person who needs social protection to the similar extent of a worker prescribed in the Labor Standards Act due to the worker's dependence on employment in the labor market" (Seong-tae Gang, 2010:134-135).

Precedents also tend to judge dependence by attaching more importance on the evaluation elements of the dependence of work responsibilities and independent (economic) dependence than on human dependence.[1] "They seem to have presented different standards from previous ones regarding the elements of consideration and ways of evaluation when judging the nature of a worker in the Trade Union Act, but the problem of legal stability remains because there is still no consistent standard without clarifying the ground for the standards" (Gyeong-bae Jo, 2014:494).

Special-type work is an employment type that continually shows a tendency of female dominance, with the proportion of women reaching 66.3% in 2007, 67.3% in 2010, 69.2% in 2016, and 69.0% in 2018 (Yoo-seon Kim, 2018).[2] The present situation where it is uncertain whether a special-type worker can get recognition as a worker pursuant to the Trade Union Act leads to the possibility of lowering women's opportunities to enjoy three basic labor rights compared to men.

1) Supreme Court, Sentence on Feb. 13, 2014. 2011Da78804 Decision.

2) Refer to Yoo-seon Kim (2018) and Yoo-seon Kim(2016), Yoo-seon Kim (2010), and Yoo-seon Kim (2007). The proportion of women was 57.1% in Heung-joon Jeong (2019, p.9), who conducted a size estimation study of special-type workers through a large-scale sampling survey for the first time in its kind.

Therefore, guaranteeing the basic labor rights of special-type workers becomes an important issue to be resolved in order to improve women's labor conditions (Gui-cheon Park, 2018:28).

B. Provisions on the Prohibition of Discrimination

The only clause that is the most related to gender equality in the Trade Union Act is Article 9 (Prohibition of Discrimination) "A member of a trade union shall not be discriminated against on the grounds of race, religion, sex, age, physical conditions, type of employment, political party, or social status." The clause on the prohibition of discriminatory treatment existed from the time when the former Trade Union Act was established. Then, age, physical conditions, and type of employment were added to the ground for discrimination in the amendment of 2008.[3] It is difficult to find any case of disputes over interpretation of this clause, but only an interpretation is confirmed that it goes against the law to restrict the eligibility of union membership on the ground of being a foreigner.[4]

This provision is slightly controversial because it does not specifically state the agent of discriminatory treatment. It is possible to postulate the agent of discrimination as the employer, but it is deemed unnecessary to prescribe the employer's discriminatory treatment in the Trade Union Act on the ground that a person does not have the status of a union member and belongs to a social minority group by sex, etc. If the

3) As an example of a similar legislation that imposed upon trade unions a legal duty not to discriminate, the United States established the Civil Rights Act of 1964. This legislation prohibits discrimination against joining union membership or in other areas on the grounds of race, sex, etc, and bans the employer from requesting to discriminate against minority groups or exercise influence in the process (Title VII of the Civil Rights Act of 1964 SEC. 2000e-2(C)).

4) Authoritative interpretation of the Ministry of Labor, May 21, 1985. Trade Union 01254-9408; Requoted from the Online Annotation of Article 9 of the Trade Union and Labor Relations Act (Feb. 1, 2016).

employer discriminated against a person upon employment, the employer can be regulated by equal treatment provisions prescribed in the Act on Equal Employment and Support for Work-Family Reconciliation or in the Labor Standards Act. Therefore, it is valid to construe this clause as the trade union discriminating against a worker in the workplace to which the union belongs or against its union member on the grounds of sex, etc. However, the clause needs further review because it has room to be read as a clause that prohibits related administrative agencies, including the Ministry of Employment and Labor, which have the authority to intervene in the formation and activity of a trade union, from imposing restrictions on the activity of a trade union on the grounds of nationality, etc.

In the litigation to cancel the return of the report on foreign worker's establishment of a trade union, the Supreme Court mentioned Article 9 of the Trade Union Act, then ruled that "To put together the content, system, and purpose of the above-mentioned clause, a worker prescribed in the Trade Union Act should include not only a temporarily unemployed person and job-searching person but also any person whose three labor rights need to be guaranteed. The Immigration Act has a provision to restrict the employment of foreigners, simply for the purposes of prohibiting the employment of unqualified foreigners. Hence it is difficult to interpret the provision as barring employers from receiving labor that an unqualified foreigner actually provides, or from exercising other rights prescribed in the labor relations laws according to the status of a worker in already-formed labor relations."[5] Although the Supreme Court did not positively decided on whether the return of

5) Supreme Court, Sentence on Jun. 25, 2015. Sentence 2007Du4995 en banc decision "Cancellation of Return of the Report on the Establishment of Trade Union" [Notice2015Ha,1080].

the report violated Article 9 of the Trade Union Act or whether it was discrimination against the exercise of the right of foreigners to organize, it ruled that restrictions could not be imposed on the establishment of a trade union on the ground that the foreigner was unqualified for employment. In this respect, the decision can be read as presupposing that related administrative agencies, including the Ministry of Employment and Labor, were subject to the ruling.

For areas where a trade union's obligation of anti-discrimination is applied, it is valid to interpret that they include not only guaranteeing the right to vote and the right to run for an election but also rights to perform all areas of union activities. Although some interpret the areas in a narrow sense that it is not permissible for a trade union to restrict or discriminate the right to vote and the right to run for an election (Jong-ryul Lim, 2019:71),[6] the areas should include "equal treatment in all beneficiary rights, such as the right to enjoy economic profits from the union's mutual aid activity, or the right to equally participate in or make use of the union's welfare activity. Moreover, although equal treatment of union members is prescribed by law, this provision should also apply when a worker joins a trade union to be a union member."[7] Not only that, any proposal of demanding collective bargaining or any content of collective agreements that have a discriminatory nature should be regarded as going against this provision because the content of union activities includes collective bargaining and collective agreements as well.

In relation to the legal effect of violating this provision, it is necessary to review whether it can be seen as an enforcement provision.

6) Hyeong-bae Kim (2018:956) has the same opinion.
7) The Online Annotation of Article 9 of the Trade Union and Labor Relations Act (Feb. 1, 2016).

Considering that industrial autonomy is the fundamental principle in the collective industrial relations law, it may be difficult to deny the effect of a union constitution or bylaw that has discriminatory treatment in union membership or union activities on the grounds of sex, etc. Because the provisions on equal treatment in the Labor Standards Act or in the Act on Equal Employment and Support for Work-Family Reconciliation do not stipulate trade unions as being subject to its regulation, it is difficult to view the provisions as a basis for arguing that it is an enforcement provision. However, if any discriminatory treatment is related to the enjoyment of three basic labor rights guaranteed in the Constitution, it is possible to argue for nullification on the ground of infringement on the right to equality. Given the nature of the right to organize having a strong nature of the right of freedom, a union constitution or bylaw should not be seen as valid if it violates the essential part of the right to organize, for example, by disallowing a person of a particular sex or race to join a trade union. As plural unionism in a company is allowed, it is possible for workers of a particular sex or race to establish a trade union even if their entry to the union membership was rejected. For this reason, it may be contended that the fundamental part of their right to organize was not violated in that situation. However, considering that there may be more cases where such trade union may not be recognized as a bargaining representative union in the simplification procedures of bargaining windows, the effect of that constitution or bylaw should not be acknowledged.[8)]

Also, there is another issue over whether to acknowledge the effect of a collective agreement according to the principle of industrial

8) A previous study by Yong-man Jo (2010, pp.455-457) argues with the same intent regarding whether the union constitution that disallows non-regular workers to join a trade union violates Article 9.

autonomy if the agreement has any content of discrimination against a particular sex or race.[9] With regard to this issue, we will develop our discussion in reference to the Supreme Court decision on what constitutes illegal discrimination against members of a private organization. In the decision in the YMCA case, the Supreme Court ruled that "if discrimination against members of a private organization by sex went beyond the acceptable limit in the light of the sound common sense and legal emotion of the community in a society, it can be judged illegal as an act that goes against the social order. Whether the discrimination went beyond such limit should be judged by comprehensively taking into consideration, the character and purpose of a private organization, the necessity of discriminatory treatment, and the aspect and degree of infringement on the benefit and protection of the law by the discriminatory treatment. In particular, regarding the character and purpose of a private organization, it should be considered whether the organization works externally only in the purely private realm in the community or whether it works partially in the public realm while performing a function for public interest."[10] In light of this precedent, a trade union performs a function for public interest such as guaranteeing three labor rights and preventing and mediating disputes, and it is an organization that receives a special protection, including civil and criminal immunity pursuant to the Trade Union Act. In this regard, if a trade union discriminated against a particular sex in the content of union membership or collective agreement, its effect can be denied. In addition to private remedial procedures, it is possible to use remedial and

9) Although there is an administrative procedure that applies an order to correct a collective agreement (Article 31 subparagraph 3), a more careful review is needed considering a critical assessment that this correction order system cannot be seen as promoting collective autonomy of industrial relations and helping dispute resolution as determined by the Constitution (Woo-chan Jang, 2013).

10) Supreme Court, Sentence on Jan. 27, 2011. 2009Da19864 Decision.

complaint procedures for any discriminatory act by a private person at the National Human Rights Commission of Korea. The term “discriminatory act” defined in the National Human Rights Commission of Korea Act includes an act of favorably treating, excluding, discriminating against or unfavorably treating a particular person regarding the supply or use of goods, services, means of transportation, commercial facilities, and land and residential facilities. As such, a trade union’s above-mentioned discrimination can be construed as discriminating against a person regarding the supply or use of services related to the trade union.[11)]

In conclusion, if a union constitution or collective agreement has a content that explicitly discriminates against a worker on the grounds of sex, race, or type of employment, its effect can be denied as violation of the right to equality prescribed in the Constitution. However, further study is needed on whether the “discriminatory treatment” prohibited in Article 9 is limited to direct discrimination or includes indirect or consequential discrimination as well.

C. Duty to Simplify Bargaining Windows of Multi-Employer Trade Unions

As plural unions were allowed in 2011, the system of simplification of bargaining windows was introduced. Accordingly, where not fewer than two trade unions exist in one business, the principle is for the trade unions to determine a representative bargaining trade union. As the duty to simplify bargaining windows is applied regardless of the type organization, a general opinion is to apply this duty to trade unions whether they are established in an individual business or in multiple

11) Article 2-3 (b) of the Act.

businesses (Jong-ryul Lim, 2019:124). This interpretation is deemed inevitable as far as the ground provision for this system prescribes that "where not fewer than two trade unions established or joined by workers exist in one business or one place of work regardless of the type of organization, trade unions shall determine a representative bargaining trade union and request the same to bargain" (Article 29-2 subparagraph 1).[12] However, a criticism is raised that the duty is unreasonable because it violates the right of multi-business trade unions to bargain collectively, which was allowed even in the past when multiple trade unions were prohibited (Sang-gyun Jo, 2010:167). The purpose of simplifying bargaining windows is to effectively solve such problems as a decrease in bargaining efficiency, an increase in bargaining cost, and difficulties in industrial relations. As such, multi-business trade unions cannot be viewed as having conflicting relations with each other because they establish the same working conditions by industry, by region, and by place of work. Nevertheless, the current system of the simplification of bargaining windows has a problem of bringing an effect of making difficult diagonal or multi-employer bargaining, which can contribute to achieving its original goal by enforcing multi-business trade unions to participate in the simplification procedures together with trade unions at a business level (Gyeong-tae Kim, 2015:241-251). This problem was also identified in the survey result of bargaining of multi-business trade unions. In other words, it is pointed out that enforcing the simplification of bargaining windows despite the differences in the scope of coverage, agenda to be represented, and the method of representation between trade unions at a business level and multi-business trade unions is a very big institutional obstacle that may shrink multi-business bargaining

12) The Online Annotation of Article 29-2 of the Trade Union and Labor Relations Act (Feb. 1, 2016).

(Chang-geun Lee, Jeong-hee Lee, In Heo, 2018:308, 314).

The restrictions of simplification procedures for bargaining windows imposed on multi-business union activities may have a negative impact on women's exercise of three labor rights. It is said that multi-business trade unions have a great effect on protecting workers at small-sized businesses, or non-regular workers whose type of employment is unstable or whose turnover rate is high because they can establish and apply unified working standards by type of business and by industry (Hye-won Kwon, 2012:117). Given the high proportion of women among non-regular workers or workers at small-sized businesses, promoting multi-business trade unions and bargaining can lead to an increase in women's trade union organization rate and collective agreement application rate. However, because the current system of simplification of bargaining windows is designed and operated in the direction of restraining multi-business union activities, it is pointed out that the system needs to be improved from the aspect of women's exercise of three labor rights (Gui-cheon Park, 2018:29).[13)]

D. Collective Bargaining and Collective Agreements

The essence of collective industrial relations laws represented by the Trade Union Act is to complement the limitations of individual labor contracts through collective norms represented by collective agreements. In this context, collective agreements get recognition of its legal nature as a norm of autonomy with a character of a legal source for labor laws

13) While acknowledging that bargaining at a multi-business level is an important task to solve women's labor issues through industrial relations, Ju-hee Lee (2013) points out another problem that the main office of Korea's trade unions by industry currently lacks abilities to coordinate the wages and working conditions for their branch offices of each enterprise without establishing a central bargaining system (Ju-hee Lee, 2013:305).

(Jong-ryul Lim, 2019:150-153). As it is recognized as a legal source for labor laws, “the normative part of a collective agreement can extend its effect not only to members of a trade union when they make the agreement but also to union members who join a trade union after making the agreement, even to non-union workers under certain requirements and workers engaged in the same kind of job in a region. Also, the effect of labor contracts that fall short of the standards determined in the collective agreement becomes null.” [14] Collective bargaining is significant as an indispensable preliminary stage to enter into collective agreements, because it is very rare to make collective agreements without going through collective bargaining. Moreover, “collective bargaining has the function of forming unified working conditions as well as the function of forming rules for operating industrial relations (function of forming norms).”[15]

If collective bargaining and collective agreements perform an essential role in forming autonomous and collective legal norms between labor and management, then it is necessary to examine the impact of the two on forming gender equal norms in the places of business from a gender sensitive perspective. Previous studies at home and abroad found the fact that collective bargaining and collective agreements have the potential as a means of contributing to enhancing gender equality in the workplace. In other words, they found that places of business with trade unions had more gender equal practices than places of business without trade unions, and that trade unions in the places of business that implement collective bargaining had a greater influence on forming

14) Introduction (Generals) to the Online Annotation of the Preamble/Full Text of the Trade Union and Labor Relations Act (Feb. 1, 2016).

15) Introduction (Generals) to the Online Annotation of the Preamble/Full Text of the Trade Union and Labor Relations Act (Feb. 1, 2016).

gender equal norms (Milner & Gregory, 2014:247).

Another role of collective agreement is to contribute to realizing gender equality by ensuring the rights at a higher level than that prescribed by the laws related to equality in employment or work-life reconciliation (Pillinger & Wintour, 2018). Collective agreements that include the agenda on gender equality have the effect of creating a new norm that improves women's poor working conditions in the workplace. Trade unions that organized workers at duty-free shops or supermarkets took notice of demands from women, a majority in the unions, then made and carried through the agendas of newly establishing allowances for emotional labor and expanding leave for prenatal checkup. This brought the effect of spreading such practices as standards for applicable business and industry (Hye-won Kwon, 2012:111-113). Also, if collective agreements include any content related to gender equality, they have the effect of implementing the content so that the duties required by law can be effectively applied. For example, it was found valid and highly effective in the field for the most vulnerable workers or "female non-regular workers to secure provisions related to childbirth and childrearing through collective agreements and to make them implemented" (Ji-hyeon Na, 2018:60). If laws related to gender equality are not supported by collective agreements, they may remain as perfunctory duties and rights because they cannot be supported by practical and widely available business practices to resolve the issue of inequality (Milner & Gregory, 2014:248).

In addition, the higher the participation of women in the collective bargaining process, the higher the possibility of reflecting the agenda on gender equality in the collective agreements. This is another important reason that women's representation should be seriously considered in

collective bargaining procedures (Briskin, 2014:213).

Despite such significance, very rare are previous surveys or statistics in Korea on the current state of reflecting the agenda on gender equality in the agenda of collective bargaining or in the content of collective agreements. Although Won-hee Lee (2017) included in her study the result of the survey on the content of collective agreements by trade unions under the Korea Labor Union Congress, the study focused only on the issue of women's representation inside the trade union called the quota system for women.

According to the analysis of 727 collective agreements by Myeong-jun Park, Seong-jae Jo, and Mu-gi Mun (2014), the proportion of prescribing menstrual leave accounted for 64.9% of the agreements, maternity leave 61.5%, miscarriage / stillbirth leave 31%, equal pay for equal work (value) 11%, discrimination upon education / training, allocation of job duties, and promotion 12%, and compliance with related laws 6% (Myeong-jun Park, et al., 2014:224-234). Impressively enough, the proportion of prescribing discrimination in employment was conspicuously low compared to the provisions related to maternity protection, such as maternity leave or miscarriage / stillbirth leave. This result of the analysis implies that collective agreements in Korea understand the agenda on gender equality in a narrow sense centering on maternity protection.

2. Current State and Causes of Gender Gaps

In the above, we summarized issues over gender equality posed in collective industrial relations laws. Because this study is limited in addressing all the gender equality issues as summarized in the above,

we focused on the areas that were believed to be currently the most important in the collective industrial relations laws and expected to have the greatest effect of enhancing gender equality. Therefore, this study developed its discussion focusing on collective bargaining and collective agreements among the collective industrial relations laws, selecting the focus of discussion based on the following. First, collective bargaining and collective agreements are an important means of forming collective norms in the places of business, and their authority is acknowledged by the Constitution and the Trade Union Act. Second, because collective bargaining and the status of the person in charge of bargaining are connected with power relations inside trade unions, collective bargaining and collective agreements are considered important mechanisms inside trade unions and areas where gender disaggregated data need to be disintegrated the most (Briskin, 2014:210-211).

This study conducted a survey to identify the current gender gaps in the application of the Trade Union Act. Since it was rare to conduct a survey of encompassing the Korean Confederation of Trade Unions and the Korea Labor Union Congress regarding women's representation in trade unions and contribution to gender equality, we aimed to identify the present conditions comprehensively through this survey.

A. Survey of Gender Gaps in Collective industrial Relations

1) Overview of the Survey

This survey was conducted with a purpose to identify the current situation of gender gaps in collective industrial relations. To this end, we selected samples for the survey from the population of 1,834 trade

unions at a business level (hereinafter referred to as “company unions”) under the Korean Confederation of Trade Unions and 3,571 company unions under the Korea Labor Union Congress as of 2019. [16] Based on a structured questionnaire, we conducted an online survey, fax survey, and postal survey combined. The final questionnaire used for the statistical analysis totaled 441 copies, including 189 copies from the Korea Labor Union Congress and 252 copies from the Korean Confederation of Trade Unions. The questionnaire was prepared by revising the questionnaire for the Gender Equality Index Survey performed by the Korean Confederation of Trade Unions in 2019 in such a way to suit the purpose of this survey. The period of the survey was from June 2019 to July 2019, with the cooperation of persons concerned in each association.[17] The content of the survey largely consists of three areas: First of all, the current state of places of business includes the type of business, the region of location, the size of the business place, the proportion of female workers, and the number of union members. The current status of women’s representation includes the proportion of female union members, the sex of union representatives, the proportion of female board members, the proportion of standing female executives, the proportion of female representatives, and the proportion of female bargaining committee members in the questions. Third and lastly, the present conditions of collective agreements include questions over whether union constitutions or bylaws have provisions on maternity and paternity protection, on the prohibition of gender-based discrimination,

16) Trade unions at a business level included branch offices and associations under trade unions by industry and labor unions by business under the confederation of labor unions by industry.

17) Due to the procedural restrictions of the survey, we analyzed the results of the survey of the trade unions under the Korean Confederation of Trade Unions using the raw data of the “Gender Equality Index Survey.” This index survey had been performed from February 2019 to April 2019 by the Korean Confederation of Trade Unions, which provided the survey results for this analysis.

and on the duty to provide information. The limitations of this survey are that the survey could not include specific questions over the current conditions of collective agreements due to the restrictions of the size of the study as well as the difficulties in question design arising from the special nature of the subjects of the survey as trade unions. Nevertheless, this study is significant in that it conducted the first large-scale survey on the current state of gender equality in industrial relations.

〈Table Ⅲ-1〉 Overview of the Survey

Category	Content	
Survey Subjects	Trade unions under the Korean Confederation of Trade Unions and under the Korea Labor Union Congress as of 2019	
Survey Methods	Based on a structured questionnaire, online survey, fax survey, and postal survey were combined.	
Survey Samples	1) Complete enumeration of branch offices of company unions under the Korea Labor Union Congress 2) Complete enumeration of branch offices of company unions under the Korean Confederation of Trade Unions	
Survey Period	June 2019 - July 2019	
Survey Content	current places of business	type of business, region of location, size of the business place, proportion of female workers, number of union members
	current human resource composition /current women's representation	proportion of female union members, sex of union representatives, proportion of female board members, proportion of standing female executives, proportion of female representatives, proportion of female bargaining committee members, proportion of female union leaders / standing female executives / female representatives / female bargaining committee members by the size of female union members
	current collective agreements	whether to have provisions on maternity and paternity protection, on the prohibition of gender-based discrimination, and on the duty to provide information

2) Results of the Survey

According to the result of analyzing the location of places of business by region, the largest proportion of responses answered “nationwide” (18.7%). By single region, Seoul accounted for the largest number, 71 cases (16.2%), followed by Gyeonggi 55 cases (12.5%), Gyeongnam 38 cases (8.7%), Chungbuk 32 cases (7.3%), Busan 23 cases (5.3%), Incheon 20 cases (4.6%), Chungnam 19 cases(4.3%), Gangwon 18 cases (4.1%), Gyeongbuk 15 cases (3.4%), Gwnagju 14 cases (3.2%), Jeongbuk and Daegu, each 11 cases (2.5%), Jeonnam 9 cases (2.1%), Daejeon 7 cases (1.6%), Ulsan 8 cases (1.8%), Jeju 3 cases (0.7%), and Sejong 2 cases (0.5%) in the descending order.

industrial autonomy acts as the fundamental principle when it comes to collective labor relations, including collective bargaining and collective agreements. Nevertheless, the primary reason for pushing the enforcement of legal mandates or actively promoting gender equality during negotiations and agreements between labor and management is because the gender gap in the three primary labor rights (the right to organize, the right to negotiate, the right to act) remains serious and persistent. As was noted in Section 3 above, female representation during labor union decision-making is very low. So is the proportion of gender equality in the collective agreement agenda. The gender gap in the exercise of the three primary labor rights is simply too great for one to expect only the voluntary actions of unions and employers to lessen that gap. In fact, the gender gap is so great that the potential of collective bargaining and collective agreements to contribute to the realization of gender equality fails to be realized.

The second reason for legislative improvement is that the law can

effectively complement the role of collective bargaining for the realization of gender equality in the three primary labor rights. Legislation can empower trade unions to monitor gender gaps in the work place and provide workers with standards and collective and individual remedies for equality in working conditions. Labor legislation that enables gender equality negotiation is considered one of the important factors that enable collective bargaining and collective agreements to contribute to the realization of gender equality.

Finally, legislative improvements can be supported for the purpose of realizing democracy in labor unions in the truest sense. Under the Korean Constitution (hereafter simply referred to as "Constitution" and the Trade Union and Labor Relations Adjustment Act (hereafter simply referred to as Union and Labor Act), trade unions have the authority to enter into collective agreements with employers through collective bargaining, and “should be run more democratically than any other private organization as it has been given powerful authorities such as exclusively leading of disputes which may possibly result in wage reduction for union members." The democratic operation of trade unions is also an important principle in that it leads to a basis for maintaining union autonomy. For the purpose of democratic operations, the Union and Labor Act stipulates in detail the procedures and resolutions of the General Assembly and the authority to conclude collective agreements. In relation to the democratic operation of unions, discussions are focused on the chairman's authority to conclude agreements and the effect of the violation of procedures in important decisions of the General Assembly. However, it is difficult to find a case in which the Union and Labor Act was reviewed from the perspective of gender equality and gender democracy.

But since “the trade union has an intrinsic character as an organization that seeks to secure representative democracy through elections", the theoretical basis for gender democracy upon this principle. If the elected pool of union officers is oligopolized by a particular gender, the union's democracy can be viewed as being infringed. Therefore, there is need to specify more explicitly and specifically in the Union and Labor Act that the genuine democratic management of unions in terms of gender equality is necessary.

Gender gap in collective agreements and collective bargaining shows up in the gender gap in the persons present for negotiations and also in the gap revealed in the agenda dealt with during the negotiations. The gender balance in the collective bargaining teams is a “basic value of democracy and trade union movements” and enables all collective bargaining to “integrate new perspectives into the negotiation agenda using women's experiences, opinions, knowledge and skills” at every stage of collective bargaining. In order to alleviate the gender gap in the persons present for bargaining, union membership rate of women should be improved. Ways to increase the participation of women in the collective bargaining process should also be sought after. To decrease the gender gap in the agenda during negotiations, the current male-centered corporate culture existent within labor unions should be changed. We need to look for ways to ensure that gender equality agenda be given important status during negotiations.

In this study, we surveyed 441 labor unions to do a fact check on the representation of women in unions. The findings revealed that a significant gender gap exists in the composition of decision-making units

within unions. Most notable in the survey results is the consistently high response rate for the question of '0% women'. The absence of women within the union's decision- making units represents the most serious situation in terms of gender balance and women's representation, with the highest response being '0% women' in all positions. '0% women' responses showed to be highest for bargaining committee members followed by officers, delegates, and executives. Such a trend shows that the bigger the position for decision-making and influence, the harder it is for women to enter into such positions. Women represented only 10.9% of union representatives; this figure is consistent with the survey results. The second highest percentage of responses is the '1~25% women' category. This category showed to be the second highest in executives, delegates, and bargaining committees members (officers exempted).[18] When these two responses ('0% women' and '1~25% women') were combined to allow for '0-25% women,' 50-60% of all union positions were included. Since the case of the proportion of women in the decision-making unit falling below 25% accounts for 50 ~ 60% of all union positions, the survey results indicate poor female representation in the labor unions.

This study also distinguished between two different union groups: one group having female union members of below 30% and one having female members of over 30%. After making the distinction, the study conducted a cross tabulation. When the proportion of women among the members reaches a certain level, the decision- making body should reflect the demographics of the union in order to ensure the democratic

18) Such trends also show up in trade unions in other countries as well. According to a study done by Braithwaite and Byrne (1995) on trade unions in Europe, women in trade unions were concentrated in specific committees and departments such as social, policy-making, training, and industrial safety. It was rare to find women in fields related to wage policies, collective bargaining, and finances (Study result cited by Briskin, 2014:210).

operation of the union. Despite this requirement, however, when females exceeded 30% of the total union population, the proportion of women in various positions showed to be 0-25% in 40-60% of all positions. It was only when the number of women in a union became the majority of the entire union that women were adequately represented in decision-making units.

This study could not contain gender equality provisions in the questions on collective agreements which exceeds legal standards. That is a limitation of this study and thus, further research is necessary. Despite such limitation, the findings of the survey are as follows. Mother-and-parent provisions are defined by law as the rights of the employees and obligations of employers. However, 11.3~50.4% of cases showed that such provisions were not specified in collective agreements. Even if the rights and obligations are already specified in the law, including such provisions in collective agreements have the effect of forcing them to be effectively implemented through collective labor relations. Therefore, common collective agreements include contents related to the Labor Standards Act and the Minimum Wage Act even though the contents have already been prescribed by law. In this context, the proportion of collective agreements that do not include mother-and-parent provisions show the position of the parenting agendas within collective labor relations. In addition, the fact that the proportion of 'None' for inclusion of the reduction of working hours during pregnancy and reduction of working hours for child care, both required by law, in collective agreements is high, shows that labor unions respond more passively to parenting agendas in comparison to other agendas.

The provisions on prohibiting gender discrimination show much lower collective agreement inclusion rates than even the parenting agenda. This

shows that the gender equality agenda of labor unions focuses on parenting and is very passive in employment discrimination.

In seeking to achieve gender equality through collective labor relations laws, the issue of Korea's low union membership rate and problems in applying collective agreements are essential points to consider. Korea's union membership rate (10.7% in 2017) and collective agreement application rate (11.8% in 2015) are low in comparison to other OECD countries. Workers in unstable employment conditions or in small- and medium-sized enterprises are unorganized and therefore do not have access to enjoy the three primary labor rights. Women have "job characteristics quite different from men, and the problem of gender segregation by industry and occupation is serious." Therefore, policies supporting the enjoyment of three primary labor rights by non-regular workers and workers in small and medium-sized enterprises are linked to the narrowing of the gender gap in the collective labor relations law.

Intra-enterprise unions can set and apply labor standards for different industries. Thus, such unions can have a significant effect of protecting non-regular workers and workers in unstable working conditions and high turnover rates. However, since the simplification process is also applied to intra-enterprise unions, the process is having a negative effect on the enjoyment of the three primary labor rights by female workers who are mainly temporary workers or work in small and medium-sized enterprises. Therefore, the Union and Labor Act should be amended to exempt intra- enterprise unions from participation in the bargaining window unification process.

Under the current legislation, the subject of bargaining window unification is limited to 'a labor union either founded or joined by a worker in single business or workplace.' Thus, another alternative for

amending the current Union and Labor Act would be to not include a intra-enterprise union as a subject for bargaining window unification when the intra-enterprise union requests unified bargaining by industry to user enterprises.

Non-regular workers and unorganized workers at small and medium-sized enterprises are very vulnerable to access to the three primary labor rights. The Union and Labor Act does not provide regulations for the support of workers to join labor unions. Meanwhile, the Act on Support for the Improvement in Labor- Management Relations (hereinafter referred to as the Labor Relations Development Act) focuses on supporting industrial relations for workers who are already organized. If the Union and Labor Act or the Labor Relations Development Act newly establishes a basis for supporting the groups not having adequate access to the three primary labor rights, unorganized female workers will be more likely to be protected by collective labor relations laws. Kwon Hye-won, who conducted a survey on the actual conditions of non-regular women workers in Seoul, noted that, “non-regular women workers are alienated from collective bargaining and the opportunity to represent their interests through labor unions. Despite various disadvantages and discrimination such as unfair layoffs and unpaid wages, they lack the organizational and institutional resources to cope with such injustices." She suggests that a center for non-regular women workers should be created to fill the current lack of an entity to champion the interests of non-regular women workers (Kwon Hye-won: 48-50, 2017). Her diagnosis and suggestion are in line with the findings of this study. If the law is amended as follows, the amendment will act as the basis for creating government projects and securing the necessary budget to support labor relations for vulnerable group workers.

Ⅳ. Occupational Health and Safety Act

In principle, the Occupational Safety and Health Act defines a gender-sensitive approach and provides the following improvement plans to be reflected in the main policies.

❍ It is positive that the 4th Five-Year Prevention Plan, which is currently being established and implemented, suggests more concrete tasks and actual implementation than its predecessor, the previous Five-Year Prevention Plan. Nevertheless, it is necessary to identify projects based on the current status of industrial accidents experienced by women workers. The government should ensure that a gender perspective that recognizes the presence of gender differences in the exposure patterns and impacts of hazardous risk factors is a principle that consistently runs throughout the industrial accident prevention plan. This can be seen as the first step towards a gender-sensitive occupational safety and health legislation. In this regard, in establishing the basic plan for preventing industrial accidents, thi study proposes a basic principle that reflects workers' differences according to gender, age, race, and disability.

❍ The current Occupational Safety and Health (OSH) Act does not regulate for employers, the main persons responsible for carrying out occupational safety and health measures, to reflect a gender perspective. In this regard, it is necessary to include gender-sensitive considerations in the OSH regulations that define the general obligations of employers, which are the principle directions of the employers' specific safety and health measures.

❍ In risk assessment, gender-sensitive perspectives should be considered

as a guiding principle throughout the entire risk assessment process, such as the selection of risk assessment targets, identification of hazards and risks related to work, estimation of risks by identified hazards and risk factors, determining whether estimated risks are acceptable, and setting up of and executing measures to decrease risks. Thus, to integrate gender sensitivity in risk assessment, it seems more appropriate to pursue the integration at the legal level. Accordingly, the following clause should be added to Article 42-2 (1) of the Occupational Safety and Health Act, "In conducting risk assessment, employers should consider gender differences or special risks rising from gender differences."

❍ In order for the Occupational Safety and Health Act to be applied equally in the workplace for all genders, law enforcement through labor supervision is essential. In Korea's regulations on labor supervisors under the Occupational Safety and Health Act, there is no basis for carrying out labor supervision in consideration of gender differences and characteristics. In this regard, one may consider amending labor supervisor's Code of Work (occupational safety and health) or writing a separate guideline for gender-directed labor supervision, as in the case of Austria.

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