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# Redressing Systemic Employment Discrimination against Women in Korea

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Korean Women's Development Institute

**Redressing Systemic Employment  
Discrimination against Women in Korea**



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# Redressing Systemic Employment Discrimination against Women in Korea

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## I . Introduction

### 1. Background and necessity of research

- This study aims to show that among the reasons that the correction system for gender discrimination in employment does not work, one is that there is no standard for judging the systemic character of employment discrimination, as well as the problem that a correction system that can be applied is not supported.
- In this study, “systemic discrimination” is defined as “a type of discrimination in which company’s system, policy, or practices, etc., result in widespread disadvantages in specific companies, occupations, industries, or regions in a complex and repeated way.”
  - In discourse related to discrimination, systemic discrimination can be understood as an instrument to better grasp and regulate the systemic nature of discrimination, rather than being a separate

concept. As opposed to a legal concept, with separate parts divided into direct and indirect discrimination, it is an instrument for identifying and judging the systemic aspects and character of discrimination. Since it is an instrumental concept for grasping and judging the systemic nature of discrimination, it is a concept that is relevant for both direct discrimination and indirect discrimination, and can be utilized on both sides, not just one.

- In Korea, the existence of discriminatory practices, tendencies, and discriminatory structures is asserted as the basis for rulings on discrimination, so discrimination has been difficult to recognize.
  - The legal principles to infer discriminatory practices and trends from the collective, repetitive gender gap, and to confirm gender discrimination based on this background have not been sufficiently formed. Even when gender discrimination in hiring in the financial sector was confirmed in 2018, limitations in handling were visible; the perception was that it was an “exceptional” deviation of “some” managers or management. As can be known from the relevant regional labor office’s statement on gender regarding the KEC workers, where it was stated, “Indirect evidence alone makes it difficult to confirm gender discrimination,” the perception of employment discrimination and labor supervision standards have stayed at the level of individual/direct discrimination. Accordingly, for the practical operation of the discrimination correction system, it is necessary to find criteria so systemic discrimination through indirect or circumstantial evidence can be confirmed; to see what systemic limitations and difficulties there are for ministries and institutions in charge of implementing policies on gender

discrimination in employment for investigating, judging, and correcting cases of systemic employment gender discrimination; and to review the necessity of improving the correction system.

## 2. Research objective

- Review the possibilities and limitations of regulating systemic aspects of discrimination through current legislation and theory of interpretation, and relief procedures
- Research judgment criteria and that can regulate systemic discrimination and legal principles
- Propose a plan for improving the correction system to regulate systemic discrimination

## II . Current status of regulation of systemic gender discrimination in employment

### 1. Legislation

- We reviewed the question of whether current laws and regulations can be effectively applied to the discipline of systemic gender discrimination. The current theory of interpretation regarding direct discrimination confirms that there is a problem of narrow application centering on the intent to discriminate. Indirect discrimination is so low in utilization that there are no explicit cases where it has been applied, and the parts of interpretation that need to be cleaned up in articles have been identified.

## 2. Relief procedure

- Systemic discrimination requires special expertise for correcting bodies because compared to individual discrimination cases, the scale and level of factual relevance that should be investigated are high and methodologically complex. Since systemic discrimination harms the entire group of female workers, it is also necessary to expand the effectiveness of affirmative relief after determining that there is discrimination. The contents of affirmative relief should not only compensate individual victims, but should also be able to actively improve the structure and practices of the workplace itself. In addition, it is necessary to consider the problem that it is more burdensome for individual women, who are the victims, to come forward due to the nature of pointing out problems with the structure and practices within the company where they work.
- As a result of reviewing the procedures for gender discrimination relief by the National Human Rights Commission, the court, and the Labor Relations Commission (to be implemented in 2022), the insufficiency of the points mentioned above was confirmed.

## 3. Cases of Structural Gender Discrimination in Employment

In this section, this study investigates cases of structural and/or conventional discrimination in workplaces through statistics, analyzing how applicable laws and corrective procedures, both of which are reviewed in Sections 1 and 2, are put in place. By doing this, the investigation will show what kind of interpretive issues can be in cases, particularly for where there was a lack of direct evidence that can be pointed to “gender,” and what evidence was used as evidence to gender

discrimination in hiring. In addition, with the help of statisticians, it will also present the results of analyzing the statistical probability of gender discrimination. Given that this study aims to expand the scope of application of the concept of direct discrimination, cases were analyzed mainly focusing on whether there were direct discriminations in workplaces.

#### A. Marriage Resignation at Daehan Flour Mills Co.

##### 1) Summary of resignation and main issues

- Relevant facts: The plaintiff, who had been working as a Level 6 office worker for 7 years, gave notice around August 1998 that she would be getting married in three months and submitted a resignation letter on November 2, 1998. As soon as the woman discovered that she would not receive unemployment benefits if the resignation was out of her own choice, she asked the company to revise her reason for resignation. But her request was rejected. Accordingly, she lodged a petition against unfair dismissal, claiming that marriage was a common cause of quitting a job in the Korean society. She employed an expression of intent, arguing that it was not the real intent of hers with relevant supportive evidence. Although the local labor committee, the central labor committee, and the administrative court viewed the case as an unfair dismissal, as was conducted by Korean companies back then, she lost her case in the local appellate court.
- Major issue: The primary issue was whether female workers at Daehan Flour Mills had to quit for marriage.

■ Relevant evidence: According to direct evidence, a memorandum of marriage and resignation was drawn up at the time of joining the company. Yet only the worker claimed the existence of it. The company however denied it, saying that there was no compulsory marriage resignation, which could be backed with employment regulations or group agreements.

As circumstantial evidence, there were statements of 2 female office workers and 2 retired female workers saying, “I joined the company on the condition that I will resign when I get married.” And confirmation statements were secured by 3 women who knew well about the plaintiff’s recruitment. However, those documents were not accepted as evidence in the higher court because they were withdrawn, or those persons refused to testify in court during the process.

Statistics of the gender group continuously showed the followings: i) All 56 full-time female workers who had been working at the time were unmarried; ii) During about 46 years of its history, not even one woman continued with working after marriage; iii) it was a fact that those females with high school diploma were hired at Level 6 for administrative work, while their counterparts being hired at Level 5. In addition, only Level 6 workers were not given opportunities a chance of promotion.

■ Key Points of ruling

The rulings in the district and the appellate court were different from each other. But the first trial ruled that there was conditional employment or a customary practice of marriage resignation, acknowledging that there were no cases of women who continued to work after marriage. On the other hand, the second ruling considered that scant indirect evidence did

not substantiate the marriage retirement practice. The ruling from the latter recognized that only unmarried women were working and that no women continued to work after marriage; women were assigned to lower positions than men. While accepting them, they said that this alone was not enough to prove there a customary practice of marriage resignation. The Supreme Court's ruling also cited the second trial's sentence.

## 2) Evaluation

### ■ Aspects of criteria for judgment

The disadvantages that female employees collectively and continuously faced, which are not the case of male, could be an important basis for determining whether or not there was gender discrimination. But it can be understood that statistical evidence was not viewed as important during the hearing of the case. This is because marriage resignation practice was not accepted, even there was a compelling statistical evidence; there were no women who continued with working after marriage in the company's history of 46 years. Even if all the testimony of marriage resignation practices or coercive resignation had been reversed, discrimination should have been done more actively given that the collective disadvantage and inequality that had been carried out over a long time. However, if we look at the above-mentioned case, there is the problem of approaching it as it did not distinguish cases from each other; such cases where only specific female individuals were disadvantaged were not identified from those cases where the whole women employees were not favored. (Koo Mi-young, 2010a:170).

For this case, two analytical methods were presented in hopes of calculating the statistical gender gap and estimating gender

discrimination. Analysis 1 compares the ratio of employment between unmarried women and men in the year when the lawsuit was filed (1998). If the Fisher test is applied and the difference between genders is statistically significant in both cross tables, this can serve as statistical evidence for gender discrimination.

In Analysis 2, the technique of comparing survival curves was applied, and more details are presented in Table 1 as below.

**〈Table 1〉 Calculation of the possibility of discrimination at Daehan Flour Mills using statistical methods**

**〈Analysis 1〉**

- (Data acquisition) Unmarried women and men who joined the company in the same year as the victim did (1991) and those who joined 1 or 2 years before the survey regarding their employment. Using the year of the lawsuit (1998) and the years before and after  $k$  as a basis, we investigated whether people were employed or not and drew up a two-way cross-table as a way that shows the gender of employees together with their employment and marital status.

- Standard of year  $k$  ( $= 0, \pm 1, \pm 2, \pm 3, \dots$ )

Category	Unmarried employee	Married employee	Changed jobs
Female	$n_{11}$	$n_{12}$	$n_{13}$
Male	$n_{21}$	$n_{22}$	$n_{23}$

- Comparison of employees by gender:

Category	Employee	Changed jobs
Female	$n_{11} + n_{12}$	$n_{13}$
Male	$n_{21} + n_{22}$	$n_{23}$

- (While employed) comparison of marital status according to gender:

Category	Unmarried employee	Married employee
Female	$n_{11}$	$n_{12} (= 0)$
Male	$n_{21}$	$n_{22}$

- In both tables, statistical evidence of gender discrimination can be viewed secured if the difference between genders is statistically significant. Fisher's test is applied to this.

### 〈Analysis 2〉

- (Data acquisition) For unmarried women and the men who joined the company in 1991 and 1 or 2 years before and after that, the number of years of service is recorded. If there was a marriage resignation, the “state” value was given 1; otherwise, 0.
- When we apply the comparing survival curves technique, survival time  $T$  is the number of years of service and the “state” is considered as a censor  $C$ , making it possible to analyze and discuss whether or not the distribution of women’s survival time was shorter than that of men’s.

### ■ Aspects of relief procedures

As we could not find anyone who experienced this case, it was impossible to clearly find out those issues raised during the Labor Office’s process of investigation and litigation. This discrimination case occurred in 1998, and, at that time, there were few organizations designated on gender discrimination in work places. As a result, the only step designed to address them was to lodge a petition with the Employment and Labor Administration and to file a lawsuit with court. After the plaintiff’s petition and recording of her testimony, these were forwarded by the Employment and Labor Administration to relevant government agencies, including to the prosecutor’s office. The petition was largely about to determine whether gender discrimination in employment would reach criminal intent, as was the fact that it underwent criminal procedure. When we consider the limitations of actions designed to remedy gender discrimination in employment by way of criminal procedure, this case shows the problem of no relief measures for victims. In addition to criminal judgments, the Employment and Labor Administration should make policy efforts so as to prevent such unfair practices from recurring, including active administrative guidance and corrective instructions. It is not understandable that after 18 years, customary marriage resignation drew attention in 2016 at Geum Bok-ju, a firm located in the same region.

## B. Recruitment Discrimination at Daejeon MBC

### 1) Summary and issues

- **Relevant facts:** Daejeon MBC hired 15 contract news anchors from 1997 to 2013, all women. The local broadcasting company has hired 4 full-time anchors since 1995, all of whom were men. The petitioner, who was hired by the company, filed a petition with the Human Rights Commission to remedy discrimination, claiming that the company showed gender-discrimination in its hiring practices, favoring men over women in terms of employment type.
- **Main issues:** What is the basis that could be used to judge that only men were recruited as regular workers when there was a vacancy in the position which had been occupied by male anchors and that only women were hired as non-regular workers by female anchors?
- **Related evidence:** No direct evidence that the broadcaster filled vacancy in consideration of gender was confirmed. The circumstantial evidence was that contract news anchors were recruited whenever there was a vacancy left by a female announcer. Furthermore, in 2006, when a female regular anchor was promoted, which thus left one position vacant, that slot was not filled by a female. On the contrary, whenever there was a vacancy left by a male, it was staffed with a regular anchor. In addition, circumstantial evidence shows that a statistical gap exists in all new regular anchors who had been hired since the 1990s, with the fact that those who assumed regular position were men and those non-regular or freelancer women.

## ■ Summary of decision

The National Human Rights Commission pointed out, “regarding the significant gender gap in type of employment that had occurred for a considerable period of time, the company did not show a list of the gender of job applicants and the scores of successful applicants. In addition, it failed to give a justifiable reason, including of acceptable business reason, or to practice on different hiring processes so as to avoid such a result.”

In addition, as the company did not submit those data related to the number of applicants by gender who applied for employment as anchors, other similar data were referenced. For example, in the recruitment of freelance news anchors in 2019, the proportion of women was 85.8%, higher than that of regular anchors. Moreover, based on current employment statistics from similar companies in the same industry, the existence of an industry practice where men are full-time employees or on contract with no termination and women contractors and freelancers. Those substitute statistics were put to use. According to the employment patterns of MBC’s 16 regional affiliates, of the male anchors, 87.8% were regular workers, while 38.9 % of females were regular workers.

## 2) Evaluation

### ■ Aspects of criteria for judgment

This decision was significant in that discrimination was recognized based on the gender gap pattern, which had appeared over a long period, repeatedly, at the group level.

(In this case) What we considered to be the most important thing was not the hiring stage, but the stage at which they posted an advertisement of a job

opening for contract employment when a female news anchor quit the position (but, full-time employment if a male announcer did so). Starting at the stage of drafting a staffing plan, it was judged that men were regarded as regular workers and women as non-regular. However, in such a situation where there was hardly any data provided by the company, we considered that, together with the interview prepared with those persons in charge (performed by authorized labor interviewers).

There had been hardly any regular employment for women since the late 1990s. As a result, it was argued that it is discrimination if there is a large difference in job category or employment type by gender. In addition, focus was put on claiming that there was effective discrimination, such as of retirement age that happened at the National Intelligence Service where the expression was used “a series in operation that in reality only applied to women.” I think we need to interpret the meaning of that well. Finally, I think it important to submit statistical differences. Even if unintentional, it should be stressed that discrimination is a segregation that exists in reality. (remarks by an interviewing lawyer)

The Human Rights Commission asked the company to explain if there was a legitimate reason for the lasting significant gender gap. As the company’s explanation was not reasonable (the company claimed it was “just coincidental”), it was determined that there was gender discrimination in it, demonstrated by a relevant structure. This method is similar to the structure proposed for judgments in Chapter 4 of this study.

We analyzed the statistical possibility of gender discrimination in this case. Out of a total of 19 employment, women and men took up 15 non-regular positions and 4 regular, respectively. The probability that all the women would be assigned to contract jobs and all men would be regular workers was only 2 to 3 in 10,000, confirming gender

discrimination.

**〈Table 2〉 Calculation of probability of discrimination at MBC Daejeon through statistics**

- Data tab:

Gender	Contract workers	Regular workers
F	15	0
M	0	4

- In the result of Fisher's exact test, (tab, alternative="greater") the p-value was 0.000258. This means that out of a total of 19 employment cases where 15 were women and 4 were men, and 15 were contract workers and 4 were regular workers, the probability that all the women would be assigned to contract jobs and all men would be regular workers was only 2 to 3 in 10,000. Accordingly, gender discrimination can clearly be seen.
- Discrimination was confirmed to exist, even though there was no other data collected for the case.

In addition to the statistical gap, there was a logical assumption built on the comments of anchor-position applicants, that is, there were much more female applicants than male due to the position's characteristics. As this took place in a situation where the information about recruited applicants could not be obtained, the approach was made in a way that inferred the data of potential applicants.

For gender-discriminatory hiring practices in similar trades including this one, it is meaningful to refer to other relevant data.

#### ■ Aspects of relief procedures

The National Human Rights Commission recommended that the major shareholder, MBC, investigate the hiring of anchors of all its regional affiliates, the measures of preventing a recurrence, and the ways of transitioning to regular positions. In addition to the recovery of damages for employment discrimination, a fact-finding survey was carried out and the implementation of improvement policies was also put in place.

### C. H Bank case

#### 1) Summary and issues

- **Relevant facts:** The Financial Supervisory Service announced that H Bank had promoted the unfair recruitment of men and women from the stage of document screening (quantitative evaluation), such as determining in advance men and women to be hired for the same job. In the second half of 2013, the bank decided to hire staff in a 4:1 ratio of male to female. It turned out that the actual ratio was a 5.5:1, so the cut-off score for women was much higher than that of men. In the second half of the year, the cut-off score of women was 467 points, 48 points higher than that of men. (419 points)

〈Table 3〉 Employee gender ratio in 2013 (H Bank)

(Unit: Person)

First half of the year						Second half of the year					
Planned*			Actual			Planned			Actual		
M	F	Ratio	M	F	Ratio	M	F	Ratio	M	F	Ratio
565	60	9.4:1	97	9	10.8:1	80	20	4:1	104	19	5.5:1

Note) The ratio of men to women according to document screening in the first half of the year

Source: Financial Supervisory Service press release, 2013 tentative result of inspection of H Bank for employment irregularity

The Financial Supervisory Service's inspection team estimated that if the cut-off score had been applied (444 points based on the quantitative evaluation of document screening in the second half of 2013) without discrimination, the ratio of men to women would have been close to 1:1, meaning there should have been an increase of 619 women, or a decrease of men in the same number.

〈Table 4〉 Estimated result of quantitative evaluation of H Bank's gender ratio according to document screening in the second half of 2013 (estimation of inspection team)

(Unit : Person)

Total applicants				Quantitative evaluation in document screening (actual, gender discrimination)				Quantitative evaluation in document screening (no discrimination)			
M	F	Total	Ratio	M	F	Total	Ratio	M	F	Total	Ratio
7,535	5,895	13,430	1.3:1	1,600	3,99	1,999	4:1	981	1,018	1,999	1:1.04

Source: Financial Supervisory Service press release, 2013 tentative result of inspection of H Bank for employment irregularity

■ Main issue: Was there discrimination against female applicants at the document screening stage?

■ Related evidence: According to the direct evidence, this was a case where the upper limit of successful applicants in the document screening was set according to gender and others. There was also internal reporting data, etc. that showed a cut-off line set differently according to gender. According to circumstantial evidence, there was a gender gap in the ratio of those who passed and failed.

■ Key Points of ruling

In the ruling from the first trial of criminal court on this case, along with the charge of obstruction of business, the violation of the prohibition of discrimination in employment under the Equal Employment Act was recognized. The court ruled that “the defendant company prepared a ‘plan for allocating personnel by type’ to determine whether or not applicants, who were categorized into regions and gender, would pass in competitive groups, estimating the number of those who would pass in each competitive group in advance.” It was pointed out that because the upper limit of successful applicants was set by gender, the cut-off line for

female applicants at the document screening stage came out quite high. When we look at the document screening cut-off for each year, we can find that it was decided in the first half of 2013 that men ranked 1060th and women ranked 49th, and, in 2015, the cut-off line for men in the metropolitan area was 2.5 and 3.25 for women. In 2016, the cut-off line for executive interviews was 3.8 for men and 4.2 for women in the metropolitan area. As a result, it was concluded that “the gender ratio of applicants who applied for H Bank’s new employee recruitment was approximately 55 men to 45 women, which was not a big difference in the ratio. But the ratio of applicants who passed the final round in the first half of 2013 was 9:1, 8:2 in the second half of 2013, 7:3 in the 2014, and 4:1 in 2016, all of which showed big differences.” It is a case of conviction based on direct evidence, such as the cut-off line that varied depending on gender, thus making it unavoidable to be handled in criminal court.

## 2) Evaluation

### ■ Aspects of criteria for judgment

H Bank’s gender discrimination in hiring in the first half of 2013 and from 2014 to 2016 was recognized as a crime violating the Gender Equality Act; there was direct evidence, such as the gendered allocation of people by region which would dictate whom to pass. When we analyzed the information of the applicants and successful candidates by gender, the statistical possibility of gender discrimination was high.

According to the ruling of the local district court, the results of the personnel test in the region of Seoul in the second half of 2016 displayed that 256 out of 480 men and 107 out of 344 women passed. This clearly

showed that the acceptance rate of women was lower than that of men, and statistical tests on this difference exhibited that the possibility of it randomly happening was extremely low. These outcomes prove that statistical analysis can be useful for detecting and judging cases of gender discrimination.

In addition, the difference in gender in the success rate (pass rate) shown through Fisher's accurate test method showed that the pass rate of women was 0.311, which took up only 58% of that of men, 0.533. This result is not only less than the 80% reference value, but this difference is also less than the p-value 0.0001, making it significant.

**<Table 5> Analysis of H Bank's personnel and aptitude test results in the Seoul region in 2016**

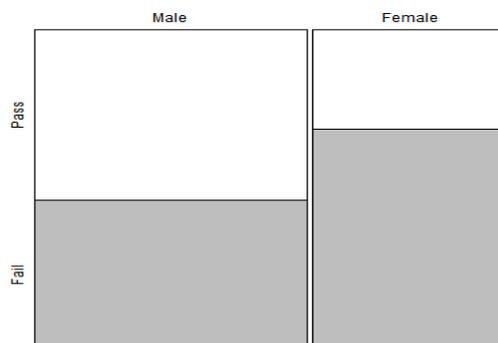
- Cross table of people who passed by gender (frequency)

Gender	Pass	Fail	Total
M	256	224	480
F	107	237	344
Total	363	461	824

- Cross table of people who passed (ratio)

Gender	Pass	Fail	Total
M	0.533	0.467	1.000
F	0.311	0.689	1.000

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- The p-value was confirmed to be less than 0.0001 as a result of verifying the difference of those who passed according to gender using the Fisher's exact test.
- The pass rate of women at 0.311 was only 58% of the male pass rate (standard value of 80%), which shows a significant difference. But also, a p-value of under 0.0001 is statistically significant.
- Although it is clear that there was a gender difference in those who passed the personnel and aptitude test, if gender information is not present in the composition and screening in personnel and aptitude tests, then differences between genders cannot be interpreted as gender discrimination. Therefore, whether or not gender information is present will be key.

In addition, it is possible to apply a method to analyze the statistical possibility of discrimination even if there is no information about the gender of the applicants.

Below is a table comparing the numbers of successful candidates by gender for each bank during the year.

**<Table 6> Percentage and number of women among new employees at the executive and clerk level of major banks**

(Unit: %)

Year	Shinhan Bank			H Bank			IBK Bank			KB Bank			Woori Bank		
	M	F	Ratio of women	M	F	Ratio of women	M	F	Ratio of women	M	F	Ratio of women	M	F	Ratio of women
2013				104	19	15.5									
2015	231	56	19.5	93	22	19.1	271	123	31	282	138	32.9	192	100	34.2
2016	175	80	31.4	257	57	18.2	122	66	35	147	88	37.4	192	100	38.8
2017.9	82	36	30.5	68	24	26.1	105	53	34				18	26	59.1

Source: Data presented by the office of National Assembly representative Shim Sang-jeong (Oct. 20, 2017)

The employment results, as above, display that H Bank had a lower proportion of successful female applicants than other banks did. This proportion varies depending on the management conditions or human structure of each bank. Yet considering that the banking sector is relatively small and requires similar job qualifications, it is necessary to examine that the pass rate of women is significantly lower than in other

banks. In Table 7, the result of the analysis comparing H Bank with other banks shows that the probability of gender discrimination in 2015 and 2016 was much higher than the significance level of 1% was applied. The result of this analysis shows that statistical evidence can play a role in detecting whether or not there is a possibility of discrimination.

**<Table 7> Analysis of employment at H Bank from 2015 to 2016 (2)**

**1) Cases in 2015**

Bank	Number of hires		Bank	Gender ratio	
	M	F		M	F
H	93	22	H	0.809	0.191
Shinhan	231	56	Shinhan	0.805	0.195
IBK	271	123	IBK	0.688	0.312
KB	282	138	KB	0.671	0.329
Woori	192	100	Woori	0.658	0.342

- Comparison of H Bank with other banks (IBK/KB/Woori)

Bank	Number of hires		Bank	Gender ratio	
	M	F		M	F
H	93	22	H	0.809	0.191
Other banks	745	361	Other banks	0.674	0.326

- Fisher's exact test (Is OR true value greater than 1?) confirmed that the p-value was 0.0015 when it compared H Bank with other banks (IBK/KB/Woori) regarding the OR (odds ratio) of male preference
- Under the hypothesis that the OR true value is 1, the probability that the observed value of OR is 2.05 or greater is only 0.15%.
- Therefore, when comparing H Bank's case with other banks (IBK/KB/Woori) the male preference odds are 2.05. H Bank's male preference is statistically sharply significant. This is because under the hypothesis that there is no male preference, the odds ratio of 2.0 or higher has only a 0.15% rate of probability.

## 2) Cases in 2016

Bank	Number of hires		Bank	Gender ratio	
	M	F		M	F
H	257	57	H	0.818	0.182
Shinhan	175	80	Shinhan	0.686	0.314
IBK	122	66	IBK	0.649	0.351
KB	147	88	KB	0.626	0.374
Woori	192	100	Woori	0.658	0.342

- In the case of H Bank, the proportion of women is 18.2%, which confirms it is very low compared with the 31.4%, 35.1%, 37.4% and 34.2% of other banks (Shinhan/IBK/KB/Woori).
- Comparison of H bank with other banks (Shinhan/IBK/KB/Woori)

Bank	Number of hires		Bank	Gender ratio	
	M	F		M	F
H	257	57	H	0.818	0.182
Other banks	636	334	Other banks	0.656	0.344

- When we examine the result of the male preference odds ratio of H Bank compared with other banks (Shinhan/IBK/KB/Woori) through Fisher's exact test (Is the OR true value greater than 1?), the p-value was confirmed to be 0.000000014. This means that, under the hypothesis that the OR true value is 1, the probability that the observed value of OR would be 2.37 or more is less than 0.01%.
- When compared with other banks (Shinhan/IBK/KB/Woori), H Bank's male preference odds ratio is 2.37. H Bank's relative male preference is statistically extremely significant. Under the hypothesis that there is no male preference, an odds ratio of 2.37 or more is only 0.01%.

## 3) Conclusion

- In 2015, OR = 2.05 and the p-value was 0.0015, so gender discrimination at H Bank was strongly suspected (1% significance level applied).
- In 2016, OR = 2.37 and the p-value was confirmed to be less than 0.001, so gender discrimination at H Bank was most probable (1% significance level applied).

### ■ Aspects of relief procedures

In this case, only criminal relief procedures were carried out. It appears that the Korea Employment and Labor Administration did not conduct administrative relief measures, such as corrective instruction or administrative guidance to H Bank, to make it address its gender-unequal recruitment procedures and practices.

#### D. Promotion discrimination at the KEC

Given that the ways Korean court does, the National Human Rights Commission can be said as aggressive in determining if there is discrimination.

In the early stages of the establishment of the National Human Rights Commission, there were cases where gender discrimination in promotion was recognized, such as a discrimination in promotion at a shipping company (Dec. 29, 2008 Decision 08진차.) 325) and another at an automobile company (Nov. 6, 2006 Decision 06진차) 42). In the former case, even though female employees had been serving in their posts for 6 years or more, most of them stayed as staffers. They had to work at their initial positions for 10 years before being promoted. This was not the case with men, who were usually promoted to a section chief after an average of 5.6 years. The higher the rank, the bigger the gender gap. Out of all employees, fewer than 5% of female employees were in the highest rank, so the National Human Rights Commission recognized promotion discrimination based on gender, noting the gender imbalance and allocation of jobs was identified as male employees took up better and higher spots and female assuming lower ones. (Park Eun-jung et al., 2020:172). Also in an automobile company's gender discrimination case (November 6, 2006 Decision 06진차42), the length of working required for promotion, which varied depending on gender, was problematic. When comparing the positions of male and female employees who joined the company in the same year from 1989 to 1996, all women were Level 4, and all men were senior managers, with an exception of one man who was a team manager. From 1989 to 1996, out of 43 female employees, 20 (46.5%) were promoted to Level 4, and 1 person (2.3%) was promoted from Level 4 to team manager. Even though 10 to 15 years

had passed since they joined the company, 22 women (51%) employees were still in the lowest level positions. On the other hand, 32 of the 35 male employees who joined the company in the same year with female were promoted, with the rest 3 who joined the company in 1996 being in Level 4 positions. But 21 (60%) of them were in the position of team manager, and 11 (31.4%) were in even higher managerial positions. None of them were in the same positions that they were initially placed in. The National Human Rights Commission said that the sharp statistical gender imbalance is compelling evidence that demonstrates prevailing, long-lasting gender discrimination in promotion (Park Eun-jung et al., 2020:172). Regarding the estimation of discrimination based on statistical gaps, the company explained that “it’s just the result of an objective and fair employee evaluation,” or “it was because jobs are different depending persons in charge.” However, contrary to the company’s claim, the National Human Rights Commission upheld its stance because the reshuffling of duties did not significantly change the quantity or quality of work assigned to male and female employees.

The trend of the National Human Rights Commission of using statistical gaps as a basis for judging discrimination has since become more prevalent, as can be found with Lufthansa’s discriminatory case.

#### 1) Summary and issues

- Related facts: Shown in the table below is the gap in promotion between men and women. The table displays male and female employees working at manufacturing sites for 20 years and more. Difference was found as all of the women had been placed into low-ranking Level 2 positions and their male counterparts into Level

3 and above. When we look at the practices of promotion among male and female workers have been hired for production since 2010, 25 men joined the company at the position of Level 2; 4 were promoted to Level 3 or higher. Of the 21, 7 were promoted from Level 3 to Level 4. It took an average of 3.95 years to get promoted from Level 2 to Level 3 and about 4 years from Level 3 to Level 4. On the other hand, all 48 female manufacturing workers started at Level 1. Only 8 were promoted, after serving an average of 7.12 years. 40 women have not received any promotion and are still at the same position to which they were assigned.

- Main issues: Is there a causal relationship between gender and the low promotion rate of women and the retention period for them to be promoted?
- Relevant evidence: Regarding specific evidence, a female employee who passed the promotion test told what she directly had heard from the person in charge, “Male employees are bread winners, and you have to understand their responsibility.” There was other testimony from another employee, “There should be someone who has to sacrifice him/herself, and women who are not in need of instant promotion have to take that.”
- Key Points of the decision

The National Human Rights Commission contemplated that among production workers who had worked for more than 20 years, all men who joined at Level J had been promoted to at least Level 2, but only some women had been promoted to Level 1. With regard to service years, men spent an average of 3.95 years for promotion, but women

had to serve 7.12 years. Number of working years and gender promotion gap are a clear indication that there was gender discrimination in working period for promotion. In response to this, the company argued that men were better positioned as they had equipment manipulation capability (including of light maintenance), physical strength, and machine handling capability, all of which boils down to a greater probability of getting promoted. However, the National Human Rights Commission dismissed the company's argument, saying that the managerial maintenance activities did not require a particularly high level of labor intensity, expertise, or experience compared with general production jobs. In addition, they said that it was hard to believe the company's claim that all the men who had been placed into Level 1 positions due to their lack of maintenance competency had now been promoted to managerial positions.

## 2) Evaluation

### ■ Aspects of criteria for judgment

The following is the result of analyzing the promotion data of male and female workers in production and calculating the possibility of incidental promotion. If the likelihood of these results being just a coincidence is close to zero, it can be said that is not an intended discrimination. To ensure its stance, the company should show proof of other legitimate reasons and factors.

**<Table 8> Analysis of Gender Discrimination in Promotion at KEC**

- Data tab: Current distribution of men and women in manufacturing positions in different level positions

Gender	Level 1 position	Level 2 position	Level 3 position	Level 4 position	Level 5 position	Level 6 position
M	0	0	0	24	29	3
F	0	14	38	0	0	0

→ tab\_0: Categorized into Level 3 positions and below, and Level 4 positions and above

Gender	Level 3 positions and below	Level 4 positions and above
M	0	56
F	52	0

→ The result of the Fisher test (tab\_0, alternative="less") of p-value  $2.2 \times 10^{-16}$  clearly establishes the presence of discrimination. Moreover, the probability that just by chance, all 56 men would be promoted to Level 4 and above, and all 52 women would remain at Level 3 or below, is virtually zero.

#### ■ Aspects of relief procedures

The Human Rights Commission acknowledged that women received considerable disadvantages in wages compared with men due to discrimination in promotion and recommended that the CEO should come up with effective measures to resolve the old gender discrimination in promotion. It was a meaningful recommendation as it reflects the institutional characteristics of the National Human Rights Commission of Korea. However, there was a limitation in that it did not include concrete steps that would be necessary to resolve promotion discrimination by gender.

#### 4. Results of reviewing disputed cases

##### ○ Characteristics of systemic discrimination confirmed through cases

- With the exception of the discriminatory dismissal of married employees at the National Agricultural Cooperative Federation

and the incident at the Electrical Construction Association, it was difficult to specify the criteria and requirements that led to unfavorable results in recruitment, promotion, and retirement. In incidents at Daehan Mill, H Bank, Daejeon MBC, and an automobile company, people were hired and promoted as in the past, but it was not possible to specify which of the criteria and requirements considered in each employment decision were the cause of the gap between those employees and others.

- These are incidents in which it can be difficult to apply indirect discrimination theory in clauses; rather, direct discrimination theory can be suitable. In addition, although standards and requirements could be specified in cases at the National Agricultural Cooperative Federation and the Electrical Construction Association, this does not mean that this should be organized only by indirect discrimination. In other words, both direct and indirect discrimination theory can be applied to one case, and the one that is advantageous for damage relief can be selected.
- The systemic nature of discrimination and lack of recognition of statistical evidence.
  - As a result of reviewing disputed cases and conducting in-depth interviews with people involved in gender discrimination cases, it was confirmed that cases are often handled without considering how severe the disadvantages are for the entire group of women and the context from which they originate. The phenomenon of greater disadvantages given only to certain minority groups can in and of itself be important grounds for assuming gender

discrimination, but such statistical evidence was not considered to be important in the process of hearing the cases.

○ Necessity of supplementing interpretation theory

- Dispute cases show the need for an interpretation theory that can encompass the systemic, collective, and cumulative gender gap in employment. Depending on concrete factual relationships, the possibility of interpretations that can encompass direct discrimination should be expanded, and not limited to indirect discrimination.

○ Problems of relief procedures

- The need for institutional improvement that can support the expertise of labor supervisors and investigators in charge of gender discrimination cases
- Limitations of existing cases of gender discrimination in employment, which were focused on criminal proceedings
- The need for active affirmative relief that can improve the structure itself

### III. Policy recommendations

#### 1. Supplementing criteria for discrimination

○ The step of judging discrimination based on statistical evidence

- Direct discrimination may be assumed if statistical inequality is confirmed and circumstantial evidence and is accompanied by situations such as users' discriminatory management decisions or remarks (Step 1). When direct discrimination is assumed, the user

may break the assumption of discrimination by explaining that the statistical inequality appears due to legitimate reasons other than gender (Step 2). Discrimination may be recognized if the user fails in Step 2. This is a step in which the user submits data, etc., and the burden is placed on the user to explain. The complainant has an opportunity to review the data or explanation submitted by the user and may rebut it. Considering that the information that workers can access in employment discrimination lawsuits is limited, the criterion for reviewing the user's defense should go beyond "the degree that the user's explanation is reasonable" and ask "whether the explanation is reasonable enough that it can break the assumption based on statistical evidence." This also means that the user is burdened with proving that the statistical imbalance is due to legitimate reasons other than gender.

- Reflecting employment gender discrimination in guidelines, manuals, educational materials, etc.
  - It is an important task to establish criteria for assuming gender discrimination utilizing statistical gaps and reflect this in law enforcement guidelines, manuals, educational materials, and promotional materials for employers, etc. This should not be limited to the people in charge who are interested, but should be established as basic content that has to be become familiar with regard to judgments of gender discrimination in employment. Accordingly, it is necessary to reflect these in regulations dealing with equal employment for men and women and guidelines for labor supervisors, manuals, as well as guidelines and manuals for investigating discrimination cases, etc. by the National Human

Rights Commission of Korea.

- The necessity of distributing self-diagnosis tools for employment gender discrimination
  - Statistical methodology to analyze the possibility of gender discrimination in employment may also be utilized by companies as a self-diagnosis criterion to voluntarily inspect the current status of employment and wages at their workplaces.

## 2. Aspects of relief procedures

- The authority to identify and conduct ex officio investigations of bodies specializing in remedying discrimination
  - The U.S. Equal Employment Opportunity Commission (EEOC) has the role of identifying whether there are discriminatory practices and patterns by reviewing employment and wage gap data at workplaces such as EEO-1, even if there has been no petition by the victim. On the other hand, in Korea, with the exception of the authority held by the National Human Rights Commission of Korea to investigate ex officio, bodies with expertise in remedying discrimination have no ability to identify systemic and group discrimination in advance based on statistical analysis. The Affirmative Action (AA) system under the Gender Equal Employment Act has been implemented to collect information on the current status of companies' employment of men and women and their wages, but they cannot identify the possibility of gender discrimination in individual companies.
  - Therefore, referencing the U.S. Equal Employment Opportunity

Commission, it is necessary to grant the authority to investigate or the ability to open a self-examination if an expert body such as the National Human Rights Commission identifies systemic discrimination patterns that appear collectively.

- Since the Labor Relations Commission is a relief procedure that operates based on the application of the individual victim, unlike other labor disputes, it might be difficult to allow the preemptive identification of only gender discrimination cases. Therefore, the correction notification system (regulated in Article 29-5 of the revised Gender Equality Employment Act) should be systematically supported so it can be actively utilized.
- In addition, for this kind of preemptive identification function to be practically operated, the National Human Rights Commission or the Labor Commission should set up projects to prioritize the identification and correction of systemic discrimination, and they should establish and implement plans to achieve this. Referencing the EEOC's plans related to systemic discrimination, the National Human Rights Commission should establish step-by-step goals related to projects such as the identification of systemic discrimination, ex officio investigation, and filing petitions to the commission, and they should manage tasks and limitations, etc. to achieve these. The Ministry of Employment and Labor is obligated to establish and implement a Basic Plan every 5 years (Chapter 6 Article 2 of the Act) for the realization of gender equality and work-family balance, and one of the tasks inside this plan should include a plan for correcting gender discrimination through a correction and notification system, as well as managing performance.

- Strengthening the right of bodies with expertise in correcting discrimination to access and analyze data
  - As seen in the EEOC, in order for the body correcting discrimination to be able to identify systemic discrimination, it is necessary to be able to grasp the reality of companies where discriminatory practices are prevalent. It is necessary to establish a legal basis in the National Human Rights Act or the Gender Equal Employment Act so AA data can be utilized by referencing the cases of the U.S. and Canada.
  - The current AA system requires data to be drawn up by dividing occupations into three levels and two sectors in relation to employment status, but it is necessary to improve job classification.
  - It is also necessary to consider improving the obligation to draw up and store user information related to new recruitment. Referring to the U.S., it is mandatory to make a record of the gender of applicants who have newly applied for employment, and then submit it if an investigation related to gender discrimination is conducted. Applying this first to private enterprises of a certain size that enter into procurement contracts with public enterprises may be considered.
- Activation of affirmative relief that can improve the systemic discrimination itself
  - The Canadian Human Rights Tribunal can issue a special temporary measure order to improve systemic discrimination in the future, and it can actively utilize relevant powers, so the CN ruling has issued a special temporary measure for women to be

hired at a certain rate until a 13% female employment rate is achieved. The U.S. Supreme Court stated that the Court “is obligated to make a ruling not only to correct past discrimination, but also to eliminate the possibility of discrimination influencing the future,” meanwhile emphasizing the importance of injunctive relief in employment discrimination lawsuits. Biased employment-related testing methods, manager retraining, posting promotion opportunities and introducing application systems can be ordered, and meanwhile, “affirmative relief” is the term for ordering employment goals related to gender or race and implementation deadlines in cases where past discrimination has been proven.

- Currently, the court’s ability to hand down such an active improvement order in civil lawsuits related to employment discrimination in Korea is only possible based on the Act on the Prohibition of Discrimination against Persons with Disabilities, and in this situation, it is impossible sue for gender discrimination. The revised Gender Equality Employment Act stipulates that the Labor Relations Commission’s gender discrimination correction order can include the “suspension of discriminatory treatment, improvement of working conditions such as wages (including orders to improve systems such as employment rules and collective agreements), or corrective measures such as appropriate compensation.” When considering the structural nature of employment discrimination, and that almost the same wording of “stop discriminatory treatment and improvement of working conditions such as wages” is interpreted as the basis for active orders in the Act on the Prohibition of Discrimination against Persons with Disabilities, and moreover considering the great need

for affirmative relief in order to change structures themselves, The Labor Relations Commission's current interpretation seems to be too passive.

Key words: employment discrimination, systemic discrimination, indirect discrimination, statistical evidence, national equality body's directed investigation

