법제교류 연구 13-21-④-1

An Analysis of Korean Legislative Development in Relation with Economic Growth

- Labor Policy and Law -

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July 14th, 2013

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Abstract

Ⅰ. Background and Objectives

□ Korea has achieved miraculous economic growth over the past half century with successful government-led economic policies. Labor policy and law contributed to the labor-intensive industry that enabled such economic growth.

□ Study on domestic political and economical circumstances and research on developed countries' legislation and policy affected on changes of Korean labor law

□ Many emerging and developing countries and countries in transition consider Korea's legislative development as their role model that will reinforce their economic growth.

□ Analysis of how Korean labor legislation has been secured, changed, and developed by the state in relation to economic growth will present lessons for emerging and developing countries and countries in transition.

Ⅱ. Main Contents

□ Relationship between economic growth and labor

○ Development of labor law and consequent protection of the rights and benefits of workers boosts the morale of workers and enhances their productivity, ultimately stabilizing society by improving the survival and dignity of workers, thus driving economic growth in the long term.

○ Labor law played a pivotal role in protecting the rights and benefits of workers and absorbing conflicts institutionally.

○ Along with the economic growth secured by the government-led development plan, labor law has continued to be re-enacted and amended since the beginning of economic development in 1960.

○ Until present, labor law has amended by state's initiation, based on state's economic policy.

□ Changes of Korean labor law

○ Phase 1 (1953 ~ 1960) : Introduction of individual labor relations law and enactment of the Labor Standards Act, Phase 2 (1961 ~ 1986) : Establishment of government-led economic development plans and enactment of the Minimum Wage Act, Phase 3 (1987 ~ 1996) : Steady developmet of the LAbor Standards Act and enactment of the Act on Equal Employment for Both Sexes, Phase 4 (1997 ~ 2005) : Re-enactment and amendment of the Labor Standards Act and ratification of the Act on the Protection, Etc. of Temporary Agency Workers, Phase 5 (2006 ~ Present) : Enactment of the law for the protection of non-regular workers

□ Analysis of changes and development of Korean labor law

○ Enactment and amendments of individual labor relations law shows government-driven developments

○ The first amendment of the Labor Standards Act was criticized as labor control to make it easier to mobilize labor force needed to the growth strategy based on internal labor mobilization. Seeking to capitalize labor and adjusting its content to a practicable level in the first amendment ended up to degrade the level of protection of the rights and interests of workers, and thus this may be deemed as regression rather than progress. At the same time, however, the amendment is deemed to have shown efforts to improve the effectiveness in its application by improving penal provisions and forming labor supervision system in order to strengthen the role of the government as a guardian despite the lowering of its protection level.

○ As Korea joined OECD and entered competition under the WTO system, the government pushed ahead with the policy to reinforce economic competitiveness to address the economic crisis, such as unfavorable balance of payment, slump in exporting, and sluggish growth rate, and as part of the policy, the Labor Standards Act was amended to improve the cost structure of companies by reducing and changing the rights and interests of workers.

○ In such cases where the law and economy made progress through mutual influence, the progress of the Act on Equal Employment for Both Sexes is the one in which economic growth has had a particularly strong influence on legislation.

○ Although working women played an important role in labor, which is the engine of the economy, under the impoverished economic circumstances of the 1950s and under the slightly improved situation of the 1960s, discussions on gender equality in employment rarely occurred, since women were still vulnerable members of society. Later, the economic growth rate and the Act on Equal Employment for Both Sexes have followed the same path relatively continuously in their development.

○ During IMF bailout program, the number of non-regular workers skyrocketed due to corporate restructuring and management efficiency. Non-regular worker protection legislation, such as the Act on the Protection, Etc. of Temporary Agency Workers and the Act on the Protection, Etc. of Fixed-term Employees and Part-time Employees has been continuously improved in an effort to provide institutional strategy to protect non-regular workers under the circumstances where dispatched labor itself is prohibited according to the Employment Security Act and also to seek employment stability by recognizing already prevalent non-regular labor as a form of labor and protecting it under the aegis of law.

Ⅲ. Expected effects

□ Analysis of how Korea labor law protecting the rights and interests of workers have been secured, changed, and developed by the state in relation to economic growth will provide an important

reference in studying the corelation between economic growth and labor law

□ Useful as basic information for International legal collaboration and support

Key Words : Labor law, Labor policy, Individual labor relations law, Labor Standards Act, Minimum Wages Act, Act on Equal Employment for Both Sexes, Non-regular worker protection legislation

CONTENTS

Chapter 1. Introduction

Section 1. Necessity and purpose of the study

Over the last half century Korea has achieved miraculous economic growth in a short period of time with successful government-led economic policies, rising from the ashes of war to become the world's twelfth largest economy. It is undeniable that such economic development and growth would not have been possible without the sweat and toil of the numerous workers who have enabled the growth of labor-intensive industry. Alongside this brilliant economic growth, labor law to protect the workers that have driven this growth and their rights and benefits have also seen many changes thus far. In order to continue to introduce and pass labor law, and improve them through amendments, political and economic circumstances at home and abroad have been vigorously studied, while policy and law in developed countries has also been analyzed and benchmarked. It has thus been determined that the changes in Korean labor law that occurred over the course of this process have enabled such successful development, while exchanging influence with the nation's economic and political circumstances. Accordingly, many emerging and developing countries and countries in transition, have at present, begun to recognize Korea's legislative development as a model of legislative development of merit for their own economic growth, and are interested in examining such.

The internal political and economic circumstances, and external situation faced by emerging and developing countries and countries in transition are nevertheless different from the 1960s to 1990s period when Korea attained its successful intensive economic growth. These countries will experience

difficulty in applying the export-oriented, labor-intensive industrial model used by the Korean government at that time to their current economic development plans, as each country has its own unique characteristics and human resource pool, as well as different priorities with regard to industry. Despite these differences, the fact that the Korean economy achieved such growth in a relatively short period of time can be helpful in selecting and fulfilling a point of direction for labor law in overall economy, even where the same types of economic development plans are not implemented, particularly if one looks into how the country's labor law have developed and changed over the process, and how they have impacted on the economic development.

Accordingly, an analysis of how labor law protecting the rights and interests of workers have been secured, changed, and developed by the government in relation to economic growth, particularly as such workers form the basis of the labor-intensive industry that played such a pivotal role in the development and progress of the Korean economy, will offer important lessons to emerging countries and countries in transition.

Section 2. Scope

Labor law is largely divided into collective labor-management relations policy and law and individual labor relations policy and law. The former includes the Labor Union Act, the Labor Dispute Adjustment Act, and the Labor-Management Committee Act, and defines the rights and duties of each party in labor-management relations. The latter includes the Labor Standards Act, the Minimum Wage Act and the Act on Equal Employment for Both Sexes, and has the government play a role as guardian to secure the basic rights of workers.

This study is most ideal if we can look into the entire history of changes in both collective labor-management relations policy and law and individual labor relations law, along with aspects of Korean economic growth. We may, however, fail to look into any part of it in depth as the scope of content and period to be dealt with are too large. Therefore, this study will have to focus on only one out of collective labor-management relations policy and law and individual labor relations policy and law. It will, given the fact that economic development is primarily led by the government, place emphasis more on analysis of government-led individual labor relations law where the government's role as guardian is noticeable. This will be more effective in understanding the influence of government on the development of labor law. This study thus aims to understand and analyze changes in individual labor relations policy and law and the background, try to grasp the role of the Korean government in guaranteeing the rights and interests of workers throughout the process of economic development, and draw lessons therefrom.

Of the many policies and laws in the individual labor relations policy and law category, this study will focus primarily on the Labor Standards Act, which forms the basis of individual labor relations policy and law, the Minimum Wage Act, the Act on Equal Employment for Both Sexes, as well as the non-regular workers policy and law vigorously discussed along with recent labor market flexibility, such as the Act on the Protection, Etc. of Dispatched Workers and the Act on the Protection, Etc. of Fixed-term and Part-time Workers. This study aims to review the development progress of Korean labor law by drawing lessons through an analysis of these laws in relation to economic growth, while suggesting lessons to developing countries or countries in transition.

In order to attain these objectives, this study will introduce its purpose, scope, and methodology in Chapter 1, examine the bigger picture of aspects of Korean economic growth and labor legislation development in Chapter 2, and view the process of change in labor law by period in Chapter 3, making an analysis and evaluation of such. Chapter 4 will summarize the study and suggest lessons for emerging countries and countries in transition seeking to benchmark Korean economic and legislative development.

Section 3. Methodology

As a part of the international legal collaboration project, this study aims to showcase aspects of Korean legislation development for emerging and developing countries seeking to benchmark Korean economic and legislative development, drawing conclusions from them. Thus, to achieve the purpose of this study, it will be essential to review the history of changes in labor law in the process of the quantitative and qualitative growth of the Korean economy under the government's economic boosting policy in place since the establishment of the Constitution in the 1950s post-Korean War. However, as the economic policy has changed many times depending on the direction or objectives of the former and current governments, labor law have also been enacted and amended repeatedly. For this reason, this study will consider periods of administration’s changes and the enactment and amendment of labor law, and also divide legislative development into five phases, taking into account the periods of change in the four individual labor relation laws focused on in this study. This study has used the historical classification commonly employed by existing studies on labor law to divide the development period into these five phases, but added some adjustment to the

division of periods, depending on the changes and main economic policy of each administration. In particular, this study has reflected the periods of enactment and amendment of the Labor Standards Act, the Minimum Wage Act, the Act on Equal Employment for Both Sexes, and the non-regular workers law, in dividing the development period. By diachronically studying the economic background of major legislation and its influence on economic growth through such classification and analysis, this study aims to provide conclusions to emerging countries and countries in transition which have already experienced, or are likely to experience, political and economic situations similar to Korea.

Chapter 2. Relationship between economic growth and labor

Section 1. Economic growth and labor-intensive industry

Once the poorest of countries in the wake of the Korean War, Korea began to implement a government-led economic development policy, and since then seen dramatic growth in terms of economic size.

<Table 1> Economic growth rate

Unit : CAGR (%)

Year	1954~60	1961~70	1971~80	1981~90	1991~00	2001~07
Real GDP growth rate	3.8	8.4	7.2	8.7	6.1	4.7

Source : Economic Statistics System of the Bank of Korea (http://ecos.bok.or.kr)

The quantitative expansion of the Korean economy began with recovery from war in the 1950s, and through economic development strategies implemented based on foreign aid from the United States, Korea achieved a compound annual growth rate of 3.8% from 1953 to 1960. Given the fact that it was a period of economic recovery from the ashes after war, this CAGR is very outstanding, but with reduction in aid due to U.S. policy changes in 1957, Korea's domestic economic growth rate began to slow down,[1] and accordingly Korea had to modify its economic plan.

1) Go, Young-seon. *Korean economic growth and the role of the government : past, present and future*, KDI, p171.

Policies led by the Park Jung-hee's military government under its economic development plan, such as emphasis on the heavy chemical industry, promotion of exports, and suppression of finance, contributed to strengthening national competitiveness and increasing productivity. In implementing a 5-Year Economic Development Plan including all these major policies, the government eliminated the possibility of labor-management conflicts which might have obstructed the quantitative expansion of the economy, by suppressing collective labor-management relations as much as possible, but took a stand on relatively protecting individual labor relations. In other words, the government took the lead in continuously changing and developing a mechanism for the protection of the basic rights and interests of workers in terms of the legal system. Government-led economic development policies and labor laws and regulations have contributed to economic growth and employment extension in the short term, enabling the government to meet its goal : the unemployment rate dropped from 8% in 1963 to 3% in 1978 and the employment-to-population ratio rose from 53% in 1965 to 58% in 1978.[2)]

However, worker dissatisfaction continued to increase, as the government enforced suppressive collective labor-management relations law and although it relatively improved individual labor relations law, in fact, it barely implemented them. In this situation, the Jeon Tae-il incident of 1970 triggered an aggressive labor movement among workers. Instead of improving and guaranteeing the implementation of these laws, however, the government continued to crack down on the labor movement, putting economic development ahead of everything, even after the collapse of the Yushin regime and the establishment of the Fifth Republic of South Korea. The human

2) Go, Young-seon. *Id*. p226

rights of workers continued to be violated, increasing political unrest and hindering social integration, but CAGR in the 1970s and 1980s was astonishing at 9.0% and 9.7% respectively.

Economic growth continued in the 1990s despite a slight decrease in rate. The factors attributable to this rapid external economic expansion through government-led investment in industrialization and the heavy chemical industry include labor, capital, technology, and many others. Of these, however, labor is deemed to have made the highest contribution. This can be explained through the characteristics of labor intensive-industry and can also be shown by the fact that Korean economic growth slowed in the 1990s when the rate of labor input increase dropped.[3)]

Section 2. Correlation between economic growth and labor law

When the national economy sees a highly quantitative expansion in terms of size and speed, as shown by Korean economic growth during the last half century after the Korean War, the gap between growth and distribution may bring about conflicts between labor and management, triggering social unrest, and consequently economic growth itself may be put on hold. In order to prevent the foundering of nation-wide efforts to achieve economic growth and escape poverty through a failure to achieve fair distribution, it is important to guarantee appropriate distribution at each stage of economic growth. This is also the way to prevent labor-management conflicts or stop the worsening of already provoked conflicts and to suggest solutions. Labor

3) Kim, Dong-seok, Kim, Min-su. Kim, Young-jun. Kim, Seung-jun, *An analysis of the growth factors for the Korean economy : 1970-2010*, KDI. p5.

law can hinder economic growth, however, in that guaranteeing appropriate distribution at each stage of economic growth will put a brake on an unrestrained scramble for economic growth.[4] However, development of labor law and consequent protections of the rights and benefits of workers boosts the morale of workers and enhances their productivity, ultimately stabilizing society by improving the survival and dignity of workers, thus driving economic growth in the long term.

Along with economic growth since the 1960s under the government-led economic development plan, Korean labor law, including individual labor relations law, which have continued to be re-enacted and amended since 1953, have played a pivotal role in protecting the rights and benefits of workers and absorbing conflicts institutionally. Of course, it should be considered that there are limits to institutional protection in reality and that there is also the possibility of institutional errors in setting the level of protection for the rights and interests of workers. Nevertheless, the fact that the government has played a leading/guardian role in protecting the rights and interests of workers through the enactment and amendment of policy and law is evidence that the government fully understands the importance of labor law to economic growth.

Labor law, first enacted in 1953 based on labor's three primary rights clarified in the first constitution of Korea, has continued to be re-enacted and amended since the beginning of economic development in 1960. The period from 1953 to 1960 for Korean labor law is meaningful in that the government showed its will to recover the nation's devastated post-war economy during this period, and at the same time to protect labor rights and

4) Jang, Woo-chan. An analysis and evaluation of the labor law change process, Korea Legislation Research Institute Workshop Material (Apr. 10th, 2013), p31.

interests by laying a foundation for the labor law to be enacted and which has been amended repeatedly since then. During the period from 1961 to 1970, the government then decided to maximize the capitalization of labor under its 'economy first' policy, and during the period from 1970 to 1987, it maintained a policy direction of 'Growth First, Distribution Later' while at the same time amending labor law by reflecting a 'national security first policy' which newly emerged at a time when problems caused by a malformed and unequal distribution structure appeared as threats to society.

During the period of the declaration of democratization in 1987 to 1996, labor law began to reflect requests for improvement of issues of distribution that had not been appropriately addressed despite continued economic growth. Over this period, legislation was vigorously discussed, to satisfy the need of workers for distribution, and the Labor Standards Act was amended in line with this trend. As the employment environment continued to worsen in the 1990s, however, various employment laws were passed and this led to the enactment of the non-regular workers law[5], while amendment of the Labor Standards Act came to be focused more on improvements to corporate cost structures and reinforcement of labor competitiveness.

The anomalous amendment of labor legislation in late 1996 caused quite a stir throughout society, leading to an economic and social tumult, as well as general strikes in the labor world, and consequently new labor legislation was passed. Although the new labor legislation passed by mutual agreement between opposing parties, the new Labor Standards Act was aimed at reinforcing labor competitiveness and flexibility, significantly reducing the

5) Gang, Hyun-ju. An analysis and evaluation of the labor law change process centered on the Labor Standards Act, the Minimum Wage Act, the Act on Equal Employment for Both Sexes and the non-regular workers law, Korea Legislation Research Institute Workshop Material (May 20, 2013), p19.

protective aspects of labor rights and interests. In November, 1997, under the IMF bailout program, legislation was drafted in such a way as to further expand the flexibility of the labor market, making it easier for companies to carry out restructuring, yet intensifying employment instability. At this time, the Act on the Protection, Etc. of Dispatched Workers was also enacted. This act contributed to reinforcing labor flexibility, but also intensified the issue of employment instability.

One of the most important labor laws enacted during the period from 2006 to the present is the Act on the Protection, Etc. of Fixed-term and Part-time Workers. Along with the Act on the Protection, Etc. of Temporary Agency Workers, this act is regarded as the most representative non-regular workers law. However, this act arouses doubts about whether or not its purpose, to legally protect the human rights of workers discriminated against outside the reach of law, is truly effective. Given the fact that a low economic growth rate and high unemployment rate have been maintained since 2006, this act seems to focus more on labor flexibility to maintain economic growth rather than aiming to protect the rights and interests of workers, as such.

Chapter 3. Analysis of changes and development in Korean labor law

Section 1. Changes of Korean labor law by period

1. Phase 1 (1953 ~ 1960) : Introduction of individual labor relations law and enactment of the Labor Standards Act

When the Korean government was established in 1948, the constitution of the First Republic of Korea (July 1948) already guaranteed labor's three primary rights and benefits sharing as the people's basic human rights. However, it is impossible to enforce constitutionally guaranteed basic human rights without legislation, and workers still suffered inferior labor environments as those fundamental labor rights were rarely enforced in reality. This triggered the large-scale Chosun Spinning Company labor dispute during the war, arousing social awareness of the guarantee of fundamental labor rights. In addition, the high unemployment rate, low wages, and inferior working environments of that time resulted in the enactment of specific labor relations laws in 1953, including the Labor Standards Act, the Labor Union Act, and the Labor Dispute Adjustment Act.

Enacted along with the Labor Union Act (Act No. 280), the Labor Dispute Adjustment Act (Act No. 279) and the Labor Relations Commission Act (Act No. 281) in 1953, the Labor Standards Act (Act No. 286) aimed to ‘guarantee and improve the basic lives of workers and seek balanced development of the national economy by forming standards for labor conditions on the basis of the Constitution.’ With these labor laws enacted in 1953, labor law began to be ratified in a systematic manner.

Comprising a total of 115 articles under 12 chapters, the Labor Standards Act aimed to define minimum labor conditions, nullify labor contracts failing to meet those minimum conditions, and protect the rights and interests of workers by introducing provisions on the prohibition of discrimination, prohibition of forced labor, and elimination of intermediary exploitation. The act also stipulated restrictions on dismissal and wage payment obligations in case of dismissal. It also included provisions designed to protect the rights and interests of workers as well as provisions concerning the supervisor system and penalties to regulate violations by employers, showing the government's will to guarantee compliance with the Labor Standards Act. The contents of this act suffer nothing in comparison with other labor standard acts in developed countries of that time. Thus if employers had observed it strictly, the act would have produced ideal results. In fact, however, the act was barely effective, especially after the economy was devastated by the Korean War. After the war, South Korea suffered extreme poverty with most of its production facilities destroyed and increased unemployment, and followed an old-fashioned employment structure.[6] Introduced by uncritically copying the Japanese legal system and U.S. labor law, without considering the reality[7], the Labor Standards Act was unable to correspond to reality and thus had to be re-enacted and amended several times later. The Labor Standards Act enacted in 1953 had an obvious gap with the actual situation of the time of its enactment as it accepted the laws and policies of developed countries without criticism. It is also said that

6) Choi, Jae-hee. 2009. *A study of the history of Korean labor law*, Korea Univ. Graduate School of Labor Studies, Master's thesis, p59.

7) Lee, Hong-jae. 2009. *Major issues of deliberation on the enactment of the Labor Standards Act*, Seoul Nat'l Univ. College of Law, The SNU Law Research Institute, Vol.50, No.3, p89; Jang, Woo-chan. supra note 4, p22. re-cited.

enactment of this advanced law was mainly led by the government rather than the labor world as there was a political purpose behind its enactment.[8] Nevertheless, it should be acknowledged that enactment of the Labor Standards Act of 1953 enabled the systematic formation of fundamental labor laws and cemented a basis for individual labor relations law to develop, while being repeatedly re-enacted and amended.

2. Phase 2 (1961 ~ 1986) : Establishment of government-led economic development plans and enactment of the Minimum Wage Act

The 5-Year Economic Development Plan set its base year as 1960 and commenced in 1962. This plan was aimed at government-led intensive economic growth over a short period of time, and as a result, it brought up unbalanced growth through intensive development investment in strategically selected areas, rather than balanced economic growth.[9] This economic development plan was laid out on the basis of the government's company uplift policy which aimed to develop domestic capital through corporate'

8) The bill for the Labor Standards Act was submitted to the National Assembly in the name of lawmaker Yong-woo Jeon and 45 other lawmakers on February 25th, 1952. The reason for proposing this bill was stated as being that the Labor Standards Act formed the basis of other labor relations laws, with lawmakers saying Although it is urgently requested that the energetic will of the people to work be awakened, and to achieve this, it is urgent to improve the status of workers and guarantee their living, even the basic rights and interests of workers defined in the Constitution are not guaranteed, owing to a defect in legislation. Such description of the reason for proposing the bill is related to labor activities such as the Chosun Spinning Company dispute. As the workers who led the disputes did not participate in legislating the Labor Standards Act, nevertheless, with the solid organizational power to exert pressure on the legislation, the legislation must have had a political purpose to show that the government was taking the lead to protect the rights and interests of workers by introducing systems that met the needs of workers.

9) Kim, Ju-seung. 1985. *Historical study of the Korean labor policy change process*, Dankook Univ. Graduate School, Master's thesis.

capital accumulation under the motto ‘Growth First, Distribution Later’. The success of this policy enabled Korea to achieve rapid economic growth, but the employment rate and working conditions remained inferior as the policy excluded the issue of distribution.[10] These inferior working conditions, including low wages, excessive workload, and poor working environments resulted from an increased oversupply of labor that outnumbered employment, thanks to industrialization. Nevertheless, the government disregarded the reality of low wages and the excessive workload that workers had to face in order to attain rapid economic growth. The company uplift policy, which was established to acquire the domestic capital needed for economic growth through the accumulation of capital in companies, focused more on corporate' capital accumulation through a variety of legal mechanisms rather than improving working conditions and protecting the rights and interests of workers.[11] As part of this policy, the government provided companies with exceptions, such as the freezing of wages, as well as tax cuts, control on the increase of public utility charges, and the easing of conditions for re-payment of company loans, which led to the further deterioration of working conditions.

In the 1960s when the labor market began to be formed in earnest, the Third Republic of Korea which spurred industrialization, amended the Labor Standards Act. The amendment of the Labor Standards Act in 1961 aimed to protect the interests of employers and employees impartially and sought good relations between labor and management by improving on inadequacies of the law and better suiting reality, narrowing the gap between the law and reality. Whereas the act of 1953 was introduced indiscriminately at the level of developed countries without considering the reality and capability of

10) The Korea Employers' Federation. 1982. Labor Economic Yearbook, p204.
11) The Korea Employers' Federation. 1982. Labor Economic Yearbook, p204.

enforcement, the amendment of 1961 was intended to address the reality that workers were still exploited and discriminated against in distribution, despite the superiority of the law itself. The main contents of the amendment are as follows：

① Install an advance notice of dismissal system where employers shall give notice of dismissal to an employee to be dismissed at least 30 days prior to the dismissal.

② Officially install a retirement allowance system where employers pay a retiree an average wage for 30 days or over for each of years of continuous service.

③ Extend the liquidation period for bereaved family compensation or wages from 7 to 14 days.

④ Limit the period of accumulated or split use of paid leave to one year.

⑤ Institute an exception regarding working hours and non-working hours when required：in the field of transportation, sales and storage of goods, finance and insurance, filmmaking and entertainment, and medicine and sanitation, particularly for the public interest or national defense, employers could set working hours to exceed 8 hours per day to an extent not exceeding 48 hours per week (for hazardous work, to exceed 6 hours per day within 36 hours per week), and may change non-working hours by obtaining approval from the Minister of Health and Social Affairs.

⑥ Secure paid maternity leave of 30 days or more.

⑦ Allow employers who employ 30 or more employees aged under 18 to replace their obligations to install training facilities for under-aged employees with the provision of scholarships.[12)]

12) Ministry of Labor. 2008. A trace of the enactment and amendment of labor standards

This amendment claims to improve and guarantee legal minimum labor conditions pursuant to the Labor Standards Act. Behind the seemingly beneficial purpose of this amendment to protect the human rights of workers, however, there was a hidden intention to mitigate the strong desires of workers for distribution in order to improve the labor productivity needed for the government's economic development policy established to fulfill its absolute principle of economic growth.[13] Current criticism about this amendment, given the circumstances at the time and the effectiveness of the amendment, is that it was a mere show to emphasize that the government had amended the act, rather than actually seeking to protect the rights and interests of workers.

The amendment of 1974 during the Fourth Republic of Korea included a provision on wage claims prior payment, a special protection provision for young workers aged 16 or above but not older than 18 regarding basic working time, and increased the legal prescription of wage claims and the right to claim disaster/accident compensation from 2 to 3 years while strengthening penal provisions. This period saw a drastic decrease in the proportion of primary industry and an increase in the proportion of manufacturing workers. Worried that the increased workers would unite and take the lead to protect the rights and interests of their group through labor movements and disputes, and that consequently business efficiency would deteriorate, the government weakened the function of collective bargaining and strengthened regulations on disputes by amending the collective labor relations law.[14] The government attempted to scuttle the political empowerment of labor unions. In contrast, individual labor relations law sought to

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law

13) Jang, Woo-chan. *supra* note 4, p26.

14) Jang, Woo-chan. *id*., p26.

improve and complement inadequacies in occupational health and safety insurance and vocational training.

In this way, individual labor relations law was amended in such a way as to strengthen protection of the rights and interests of workers, at least in terms of content during implementation of the government-led economic development plan. In terms of effectiveness, however, the norms were not observed in reality, and the government also did not apply sanctions to those who violated them. The government was not, in fact, faithful in playing its role as guardian of the law, and although the scope and degree of protection of the Labor Standards Act were nominally extended, labor was still not in place, being subordinate to economic policy.

The fact that no proper improvement was made in the real wages of workers in the 1960s illustrates that there was no capability to implement the Labor Standards Act despite its enactment and amendment. The problem of unresolved real wages is also shown through the fact that wage disputes accounted for 67.3% of all labor disputes that occurred in that period. Overpopulation due to a great influx of rural population into the cities, due to the impoverished conditions in rural communities in the 1970s, led to an increase in employees and laborers, resulting in inferior working conditions such as excess labor and low wages. In order to maintain a living with low wages below the minimum costs of living, workers had to engage in extended work and holiday work, and employers forced them to work longer to maximize profits, ignoring the Labor Standards Act. Despite contributing to national economic growth in terms of the quantitative expansion of corporate' wealth, this led to a deformed economic structure whereby fair distribution was not attained together with economic growth. Furthermore, the depressed economy of the 1980s led to an increase in unemployment

and consequently delays in payment of wages became prevalent during this period.

The constitution of the Fifth Republic of Korea promulgated and enforced in 1980 (revision of the preamble on October 27th, 1980. Constitution No.9) included provisions regarding guarantee of fair wages and human dignity, implying the possibility of the enactment of the Minimum Wage Act. However, the government judged that increasing labor disputes resulting from worsening labor-management relations had reached the level of a threat to national security, and as a result it ratified the Minimum Wage Act by separating the provision on guarantee of minimum wage from the existing Labor Standards Act.

After this, the Labor Standards Act, amended the same year, clarified the intent to guarantee wage payment by raising wage claim guarantees and imposing a jail sentence for delays in payment of wages. However, this act also took a step backward in its stance to protect the rights and interests of workers, as it permitted employers to set working hours at 48 hours per week, by agreement, and eased limits on the working hours of under-aged workers from 7 to 8 hours. Nevertheless, the act revealed the government's firm intent to secure a minimum standard of living for workers by setting the direction and interpretation standard of the Labor Standards Act as ‘securing personal dignity’ and stipulating its desire to guarantee appropriate wages. As a result, it suggested a direction for individual labor relations law and provided guidelines for the interpretation of existing norms. This act played a role, functioning as a pre-announcement of the Minimum Wage Act, enacted independently later.

The minimum wage was determined differently for each business type considering the living costs of workers, the wage of similar workers and

labor productivity. It was reviewed by the Minimum Wage Deliberation Committee and confirmed by the Minister of Labor, and employers who violated it were subject to strict penalties : imprisonment of 3 or more years or a fine of 10 million won or less. In order to minimize its influence on the national economy at the time of its introduction, the act was planned for gradual introduction, first to manufacturers of 10 or more full-time workers only by 1988, then to all businesses of 10 or more full-time workers by 1990, and to businesses of 5 or more full-time workers by September 1st, 1999.

Separately setting a minimum wage system, significant in terms of the development of worker skills and functions, while seeking the stabilization of low-income earners' livings through the Minimum Wage Act, is characterized by the fact that it resolves wage problems through a convened minimum wage deliberation committee meeting led by the government rather than through the commonly adopted labor-management collective bargaining method. In fact, wages are supposed to be determined by agreement between labor and management. However, the government intends to intervene in the decision making process by setting and legally guaranteeing a minimum wage as employers may unilaterally select unfair low wages by using their positions of power. In this way, the government seeks to stabilize the living conditions of low-income earners to smoothly reproduce the labor force and improve labor quality, contributing to healthy development of the national economy.[15] It is noticeable that the government played a leading/guardian role in enacting and enforcing the Minimum Wage Act. Compared to the ILO minimum wage regulations and minimum

15) The Ministry of Government Legislation. *Labor relations law history of individual labor relations law*, p2003; Choi, Jae-hee. supra note 6. p111. re-cited.

wage systems implemented in other developed countries, this act was still insignificant in terms of both time and content, but the enactment of a separate minimum wage law was progress in Korean individual labor relations law.

3. Phase 3 (1987 ~ 1996) : Steady development of the Labor Standards Act and enactment of the Act on Equal Employment for Both Sexes

After the political democratization marked by the declaration of democratization on June 29th, 1987, South Korea began to see severe labor disputes. Despite the highly compressed economic growth achieved based on the government-led economic development plan planned and implemented relentlessly since the 1960s, growth and wealth from the economic success was not properly distributed to workers, and a fundamental cause of this turmoil can be found in this unfair distribution of wealth. This is also partially attributable to the fact that the government strove to reduce collective labor relations law and suppress collective labor relations in order to prevent labor movements and disputes which could be an obstacle in seeking economic growth first, and this led to a severance of communication between labor and management. Accordingly, this period saw South Korea finally escape its 'growth first' policy and begin to vigorously discuss the issue of distribution through amendments to constitution and labor legislation.[16)]

The amended Labor Standards Act of 1987 is characterized by its securement of a minimum standard of living for workers, by guaranteeing wage claim prior payment, and protecting workers by preventing excessive workloads through the abolition of the flexible working schedule system. In

16) Gang, Hyun-ju. *supra* note 5, p17.

addition, the government's duty to implement the minimum wage system, stipulated in Article 32, Paragraph 1 of the amended Constitution, laid the constitutional grounds for the enactment of the Minimum Wage Act of 1986. In the same period, labor law prohibited unfair gender discrimination by introducing the idea of gender equality. As labor law was developing in a way to protect the rights and interests of workers, the flexible working schedule system was also abolished. This went against the stream of free global competition and did not follow demands for flexibility in the labor market. In a sense, however, it was in line with the protection of the rights and interests of workers that had been continuously discussed and sought.

Although Article 5 of the existing Labor Standards Act prohibited gender discrimination, the Act on Equal Employment for Both Sexes, enacted on April 1st, 1989, embodied the existing abstract forced regulations and comprehensively guaranteed gender equality in employment by expanding the scope of the law to every area of employment. It was a move to institutionally improve gender discrimination against working women, who in the 1960s and 1970s, were discriminated against in most working conditions, compared to male workers, but who had made an absolute contribution to industrialization in terms of numbers. The Act on Equal Employment for Both Sexes was enacted in 1987 at the request of women led by highly educated professional female workers in high social positions and women's organizations.

The Act on Equal Employment for Both Sexes includes a prohibition on gender discrimination in employment, which was not included in the equal treatment provision of Article 5 of the existing Labor Standards Act. This act aims to ‘guarantee equal opportunities and treatment to both sexes in employment according to the idea of equality in the Constitution, and contribute to improving the status and welfare of working women by

protecting maternal instincts and developing occupational capabilities.' The main content of the act is as follows :

① The Minister of Labor created the Working Women's Welfare Plan, which includes promotion of women's employment, guarantee of equal opportunities for both sexes, and matters regarding the protection of maternal instincts for female workers. The Minister of Labor had the Working Women Welfare Plan created, which includes the promotion of women's employment, guarantee of equal opportunities for both sexes, and the matters regarding the protection of maternal instinct of working women.

② Employers may not discriminate women from men in the recruitment, employment, training, placement, promotion, retirement age, retirement and dismissal of workers.

③ Employers may allow working women with an infant aged less than 1 year to have unpaid maternity leave for up to 1 year, and may not discriminate against them for their having such leave.

④ Installation of an Employment Disputes Mediation Committee under local labor administrative agencies to mediate disputes regarding gender discrimination.

The Act on Equal Employment for Both Sexes clarified the idea of gender equality in labor relations. However, it was criticized for its inadequate effectiveness and precision as it was enacted hastily in preparation for the presidential election in 1987, without collecting sufficient opinions from women's organizations.[17] For this reason, experts in women's

17) Park, Seon-young. *A study of the effectiveness of the Act on Equal Employment for Both Sexes*, Social Law Study Iss. 15. (2010), p115; Cho, Sung-hye. An analysis and evaluation of the labor law change process centered on the Labor Standards Act, the Minimum Wage

law and women's organizations conducted campaigns for amendment of the act, and as a result, it was amended several times to include certain new provisions, such as a definition of discrimination (Article 2-2, Paragraph 1), a provision on equal pay for work of equal value (Article 6-2) and a provision making employers responsible for submitting proof in dispute resolution (Article 19), and later strengthening penal provisions (Article 23 and 24) to reinforce the effectiveness of the act.[18] The amendments up to the seventh in 2007, were made primarily to complement the precision of the law, expand its scope of application, and improve its effectiveness.

The eighth amendment, however, made in 2007, is characterized by the change of its name to the Equal Employment Opportunity and Work-Family Balance Assistance Act, and a complete revision of its content with the addition of measures to address low birth rates. The problem of equal employment for both sexes was determined to involve the serious low birth rate and aging caused by working women's avoidance of marriage and childbirth, under conditions where the economic activity rate of women surpassed 50% for the first time in 2005. Nonetheless the gender salary gap remained the lowest among OECD member countries, and support for childbirth and childrearing was considered an ultimate solution for the problem of gender equality in employment. The purpose of the Act on Equal Employment for Both Sexes at the time of its enactment was to achieve gender equality in employment, but the purpose of the amendment (the Equal Employment Opportunity and Work-Family Balance Assistance Act) was to contribute to improving quality of life through support for

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Act, the Act on Equal Employment for Both Sexes and non-regular workers laws, Korea Legislation Research Institute Workshop Material (May 20th, 2013), p46. Re-cited.

18) Cho, Sung-hye. *supra* note 17, p46.

work-family balance in addition to the attainment of gender equality.[19] For this reason, doubts have arisen about whether these two clearly different purposes can be served through a single law. It is in doubt as to whether or not support for family-work reconciliation can actually contribute to gender equality as intended, with concern that this policy may serve as a heavier burden on working women under the guise of a policy aimed to make it easier for women to fulfill housework and childrearing, and still placing such burden on them.

4. Phase 4 (1997 ~ 2005) : Re-enactment and amendment of the Labor Standards Act and enactment of the Act on the Protection, Etc. of Temporary Agency Workers

In the 1990s, South Korea saw economic growth slow, with increasing current account deficits, and finally in November 1997, with difficulties in the financial and exchange market aggravated due to chain bankruptcies of large companies and the financial crisis in the Southeast Asia, the nation was eventually confronted with the exchange crisis and had to apply to the IMF for a bailout to avoid sovereign default. Small and medium-sized businesses went bankrupt in a domino effect due to high interest rates and the unemployment rate hit a record high in 1999.

The Labor Standards Act, enacted and amended several times under the IMF regime, was changed in such a way as to reflect the stabilization and restructuring programs requested by the IMF. It aimed to allow flexible management of employment relations, ease inflexible working times and complement procedural requirements in dismissal for managerial reasons to prepare protective measures for both employers and employees. In addition,

19) Cho, Sung-hye. *id*., p58.

it reduced statutory working hours to 40, and sought to improve quality of life through leave.

The labor market reform included in the intensive restructuring requested as a condition for IMF bailout includes labor market flexibility by relaxing restrictions on dismissal in corporate M&As and restructuring, and the implementation of active labor market policy by allowing private and temporary job placement business.[20] Legalization of dispatched labor became controversial in the process of introducing systems for labor flexibility. As a result, the Act on the Protection, Etc. of Dispatched Workers was enacted on February 20th, 1998, supported by the business community, for the purpose of utilizing the good elements of the dispatched worker system with preparation of an instrument needed to prevent the system from being abused under circumstances where the use of non-regular labor increased but no relevant regulations existed.

This act specified the types of work available for dispatched labor, and defined the term of dispatched labor as one year with the option to extend it once by agreement, and stipulates strict qualifications for dispatched worker providers : they must hire 5 or more workers, subscribe to unemployment insurance, national pension, industrial accident compensation insurance, and medical insurance, have a certain level of capital and meet office requirements, and must obtain approval from the Minister of Labor. In addition, this act prevents abuse of dispatched workers by prohibiting the dispatch of workers to workplaces suspended due to disputes to carry out suspended work even when such act is legal.

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20) Lee, Gwang-taek. Feb. 1992. *Problems of the temporary agency workers law and strategies for improvement*, Kookmin Univ. Journal of Law Vol.11. p312; Cho, Sung-hye. id., Re-cited.

5. Phase 5 (2006 ~ present) : Enactment of the law for the protection of non-regular worker

In response to the need to prepare for increasing employment instability and a weakened social safety net due to the dramatic increase in non-regular workers in the late 1980s, the Act on the Protection, Etc. of Dispatched Workers was enacted in 1998, and the Act on the Protection, Etc. of Fixed-term and Part-time Workers was legislated on December 21st, 2006, as a mechanism of legal protection for non-regular workers such as temporary workers, hourly-paid workers, and part-time workers.

Whereas dispatched labor has the problem wherein the actual labor user can avoid their obligations pursuant to the labor laws by having another person sign the labor contract instead of themselves, non-regular workers such as temporary workers, hourly-paid workers, and part-time workers have the problem wherein the company may avoid its obligations to protect them pursuant to the labor laws by signing a non-exclusive contract with them, as the company needs them just temporarily.[21] This reduces the burden of employers since they can avoid their obligations for protection and welfare of workers pursuant to labor law, and this leads the executive body of most businesses, large or small, to relieve the burden of labor costs by replacing their regular workers with non-regular ones under the global economic system that continues to demand labor flexibility. Accordingly, discrimination against non-regular workers in wages and all other working conditions was not improved at all, but the numbers of non-regular workers gradually in-

21) Cho, Sung-hye. *id*., p69.

creased. In 2006, the numbers exceeded a third of all wage workers[22]. As of March 2013, the numbers of non-regular workers reached 8.58 million, more than a half of all workers.

The dispatch law, enacted in 1998, was first amended in 2006 with the addition and amendment of some provisions to reinforce the protection of dispatched workers.[23] Later, the 7th amendment improved on the rationality of penalties by amending the penal provision regarding violations of duty for written notification of dispatch labor conditions.[24] The 10th amendment of February 2012 specifies that, in case of illegal dispatch, the employer shall employ the dispatched worker regardless of the period of use. Given the fact that the existing act posed such obligation only when the illegally dispatched worker worked for at least 2 years, this change is deemed to have reinforced the protective mechanism to stabilize the employment of illegally dispatched workers. After the exchange crisis in 1997, companies replaced many of their regular workers by low income non-regular workers, and consequently the proportion of non-regular workers exceeded a third of all wage workers. Nevertheless, discrimination against them remained unchanged, which is shown by the fact that their average monthly wage was only 62.8% of that of regular workers.[25] There was an increasing call for improvement of inferior working conditions for non-regular workers who

22) Ministry of Labor. Dec. 2006. *An Explanation of Non-Regular Worker Protection Law*, p3.

23) Prohibition on discrimination against temporary agency workers and introduction of corrective systems (Article 21); mandatory written notification of employment conditions (Article 26 Para. 2 and 3, inserted)

24) Changed from imprisonment of 1 year or shorter or fine of 10 million won or less, to fine for negligence of 10 million won or less.

25) Ministry of Labor. Dec. 2006. *An Explanation of the Non-Regular Worker Protection Law*, p3; Additional Research on Economically Active Population, Statistics Korea; Cho, Sung-hye. supra note 17, re-cited.

were low-income-earners and excluded from welfare, and in 2001, a Special Committee on Measures for Non-Regular Workers formed by the Korean Tripartite Commission began to discuss plans for improving systems to protect the rights and interests of non-regular workers. Through the Act on the Protection, Etc. of Fixed-term and Part-time Workers, enacted in 2006 as a result of such discussion, the government limited the period of use of fixed-term workers to 2 years. Fixed-term workers with more than 2 years of service are regarded as having signed a non-fixed term contract and the employer may not terminate employment claiming expiration of the contract, unless there is a proper reason for dismissal. This act also restricts overtime work even when it is within the statutory working hours, and stipulates that employers should make efforts to convert part-time workers to full-time workers. In addition, this act provides legal grounds for protection of the rights and interests of fixed-term and part-time workers in various ways, by prohibiting discrimination against them and making employers specify working conditions in writing. In addition, this act attempted to extend the scope of penalties for violation through three amendments.

Section 2. Analysis and evaluation of the changes of Korean labor law

1. Analysis and evaluation of the changes of the Labor Standards Act

(1) Economic Growth and development of the Labor Standards Act

Since its enactment in 1953, the Labor Standards Act had been amended six times, and then was re-enacted in 1997 and been amended more than 20 times since re-enactment. Some of the amendments were made simply to

refine or change the text, while some were intended to separate some content guaranteed by the Labor Standards Act into independent laws. Therefore, when analyzing the development process of this act in connection with economic growth following its enactment in 1953, it would better suit the purpose of the analysis to focus more on the key enactments and amendments of the act directly related to national economic policy or aspects of society rather than examine every detail of all enactments and amendments including simple refinements of the legal texts.[26)]

After the first legislation of the Labor Standards Act in 1953 based on the first constitution of Korea, before implementation of the economic development policy in the 1960s, there was no method given to fill the huge gap between the reality of extreme poverty and the Labor Standards Act of an advanced, global level, and the government also showed no efforts to address the problem. After this, South Korea saw rapid compressed economic growth under its 'Growth First, Distribution Later' policy, whereas corresponding fair distribution was not achieved, widening the gap between the rich and the poor. As a result, there was an increasing voice to represent the desire of workers for distribution and protect the rights and

26) In order to respond to changes in the industrial structure and a diversified labor market and employment forms, many parts of the Labor Standards Act were separated into independent laws, including the Minimum Wage Act, the Industrial Safety and Health Act, the Equal Employment Opportunity and Work-Family Balance Assistance Act, the Wage Claim Guarantee Act, the Act on Protection, Etc. of Temporary Agency Workers, the Employee Retirement Benefits Security Act, and the Act on Protection, Etc. of Fixed-term and Part-time Workers. In addition, there were several amendments of the Labor Standards Act with a purpose other than to give or receive influence concerning, economic growth, including 'making it easier for the people to understand the legal texts (May 17th, 2007)', 'refining related provisions according to the abolition of the patriarchal family system of civil law (May 17th, 2007)', and 'reflecting the renaming of another law (December 21st, 2007). Gang, Hyun-ju. *supra* note 5, p10.

interests of workers, even though 10 years had already passed since commencement of economic development by the time that voice finally appeared. Even after the belated appearance of serious discussions regarding distribution, the amendment of the Labor Standards Act was still led by the government, not through discussions between labor and management. Therefore, it is thought that the direction of amendments to the act was still subordinate to the government's economic policy rather than primarily seeking protection of the rights and interests of workers. The amendments were intended to considerably dilute workers' wishes, already oppressed due to the restrictions on labor union movements to the extent to prevent harm to national economic development and consequently increase labor productivity to contribute to economic development.

Through several amendments, the role of the law in protecting the rights and interests of workers has been consistently reinforced and supplemented, at least in appearance. Given that the guardian is the government, according to the characteristics of individual labor relations law, the effectiveness of having such an advanced law protecting the rights and interests of workers will wholly depend on how the government takes the lead in enforcing the law and how effectively it regulates violations of the law. Therefore, it is difficult to conclude that the government has effectively protected the rights of workers merely by the fact that the protection mechanism has been reinforced institutionally. This is because it is clear that while maintaining an economic policy focused more on growth than distribution, the government had had difficulties in leading implementation of systems to protect the rights and interests of workers given that improvement of their working environment was thought likely to result in a degradation of economic growth efficiency.

Nevertheless, it should not be underestimated that the government laid a minimum foundation through enactments and amendments to the act, simply because it was not active in enforcing the law. That the government legalized the main safety nets needed to achieve the ideal through continuous legislation and amendments, despite current difficulties in implementing them, can be deemed to be the result of these minimal efforts to guarantee the basic rights of workers. This can also be interpreted as a revelation of the government's will to reinforce and actualize implementation capability for these norms. As shown in the table below, the scope of application of the Labor Standards Act has had a tendency to gradually expand[27], and this also indicates an increase in normative power. If this normative power continues to increase, the act, codified at the level of developed countries, will begin to exert actual effects, and this will bring about a concomitance between law and reality.

<Table 2> History of the amendment of the enforcement decree regarding the scope of application of the Labor Standards Act[28]

Act	Description	Enforcement decree	Description
Act of 1953	Declare application to all businesses or workplaces, and delegate the specific scope of application to the enforcement decree.	Decree of 1954	Not applied to businesses of 15 or fewer employees Applied to businesses of 16 or more employees
		Amendment	Not applied to businesses of 15 or

27) Bae, Moo-gi. 2003. *Labor Economics*, BOBMUNSA, p.17; Jang, Woo-chan. supra note 4, re-cited p16.

28) Jang, Woo-chan. *id.*, p15.

Act	Description	Enforcement decree	Description
		of 1962 (Decree No. 977)	fewer employees Applied to businesses of 16 or more employees (*Not applying severance pay, annual paid leave and additional pay to businesses of 16-29 employees.)
Amend-ment of 1974	Same as above	Amendment of 1975	Not applied to businesses of 4 or fewer employees Partial application to businesses of 5-15 employees Applied to businesses of 16 or more employees
Amend-ment of 1987	Same as above	Amendment of 1987	Not applied to businesses of 4 or fewer employees *Partial application to businesses of 5-9 employees Applied to businesses of 10 or more employees
Amend-ment of 1989	Declare application of the act to businesses of 5 or more emplo-yees, and specify par-tial application to busi-nesses of 4 or fewer employees.	Same as above (Enforcement decree not amended)	Same as above
Act of 1997	Same as above	Amendment of 1998	*Partial application to businesses of 4 or fewer employees (Attached Table 1 of the decree)

Act	Description	Enforcement decree	Description
			Applied to businesses of 5 or more employees
Amend-ment of 2001	Same as above	Amendment of 2001	*Partial application to businesses of 4 or fewer employees (Revised Attached Table 1 due to the revision of the provision on the protection of women in the law) Applied to businesses of 5 or more employees

(2) Thesis-antithesis-synthesis interaction between the Labor Standards Act and economic growth and the(ir) development.

Since the enactment of the first Constitution, major individual labor relations laws, including the Labor Standards Act of 1953 and the enactments and amendments of the same act, the Minimum Wages Act, which was separated out of the Labor Standards Act and independently enacted and amended several times, the Act on Equal Employment for Both Sexes, which was also separated from the Labor Standards Act to protect the rights and interests of female and non-regular workers, who were exposed to discrimination, the Act on the Protection, Etc. of Temporary Agency Workers, and the Act on the Protection, Etc. of Fixed-Term Employees and Part-Time Employees, have been developed by the lead of the government rather than labor-management agreement or the National Assembly, as shown in the history of their enactments and amendments.

The Labor Standards Act of 1953, aimed to guarantee and improve the basic lives of workers and seek the balanced development of the national

economy by introducing labor standards law of the level of developed countries and defining the standards for labor[29], is usually evaluated to have copied Japanese and U.S. law in that the government led the enactment of the law that was not effective at all given the then impoverished economic situations and the low level of awareness after Korean War despite its astonishingly good quality. It has a difference from the reality in that the Labor Standards Act provides a high level of protection when it is ineffective in reality and the government also shows little will to implement it. Thus it is deemed as nothing more than the legislation of a global level labor standards act.

Then the Korean military government led the amendment of the Labor Standards Act to improve its normative power rather than maintaining the act without effectiveness. For the first amendment of this act, the government explained it was aimed to make a more effective legislation compared to the original one by adjusting its content to the level of reality. However, this amendment was also criticized as labor control[30] to make it easier to mobilize labor force needed to the growth strategy based on internal labor mobilization. Seeking to capitalize labor and adjusting its content to a practicable level in the first amendment ended up to degrade the level of protection of the rights and interests of workers, and thus this may be deemed as regression rather than progress.[31] At the same time, however,

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29) Lee, Hong-jae. 2009. Major issues of deliberation of the enactment of the Labor Standards Act, Seoul Nat'l Univ. College of Law, The SNU Law Research Institute, Vol.50, No.3; Gang, Hyun-ju. *supra* note 5 re-cited, p13

30) Lee, Sang-hee. 2005. *A study on the progress and characteristics of labor legislation in the economic development era in the 1960s*, Industrial Relations Study Vol.15, No.2, Korea Labor Employee Relations Association (KLERA); Gang, Hyun-ju. id., re-cited p13.

31) The amendment replaced the dismissal allowance with the advance notice of dismissal scheme, and allowed employers to get exemption from the obligation of business suspension allowance for business suspensions attributable to them by approval of the Labor

the amendment is deemed to have shown efforts to improve the effectiveness in its application by improving penal provisions and forming labor supervision system in order to strengthen the role of the government as a guardian despite the lowering of its protection level.

In the 1970s when national security was the top priority under the Yushin constitution, the labor's three primary rights were put on hold, and the global recession and the economic downturn on top of such security first policy resulted in frequent violation of the Labor Standards Act. The social unrest caused by failure to secure the basic wages and employment stability of workers became a threat to the national security, and to address this problem, the Labor Standards Act was amended again.[32] Again led by the government rather than based on the needs of workers or by a motion to the National Assembly, the amendment was made in a way to fortify its normative power. However, the economic growth first policy of 'Growth First, Distribution Later', just like the national security first policy, hindered the improvement of working conditions of workers even through the Labor Standards Act amended to improve the status and welfare of workers.

As South Korea joined OECD and entered competition under the WTO system, the government pushed ahead with the policy to reinforce economic

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Relations Commission. In addition, it deleted the provision that recognizes statutory holidays as a labor day, reduced the number of paid leave, put limits on the non-fixed term pileup or split use of leave, and made an exception to partially enable overtime work exceeding the statutory working time and the change of a recess.

32) The scope of the Labor Standards Act was changed from businesses of 16 or more employees to 5 or more employees, and a new provision on wage claim prior payment was added, and the special protective provision for under-aged was included and the negative prescription of wage claim was extended. In addition, penal provisions were reinforce, and attempts to specialize and rationalize labor administration were made by transferring the entire authority from the Labor Standards Act from the Minister of Health and Social Affairs to the Commissioner of the Regional Ministry of Labor.

competitiveness to address the economic crisis, such as unfavorable balance of payments, slump in exporting and sluggish growth rate, and as part of the policy, the Labor Standards Act was amended to improve the cost structure of companies by reducing and changing the rights and interests of workers.[33] Since the act began to be enacted and amended by the lead of the government rather than by labor-management agreement or by the National Assembly, this amendment would be regarded as a regression from the viewpoint of the labor world. When the labor law was amended again in 1997 after the IMF crisis to make the labor market flexible, however, it regressed further in terms of the protection of workers.[34] Nevertheless, there was some progress in the working conditions of working women or low-income-earners in order to meet the global labor environments and global level of working conditions in addition to the reinforcement of competitiveness in the global society.

33) Detailed provisions regarding dismissal for managerial reason were separately codified, and the flexible labor scheme was introduced to improve flexible operability.

34) The amendment dated February 20th, 1998, clarified the requirements for employment adjustment and stipulated the transfer, acquisition and merger of businesses to prevent financial difficulties as justifiable necessity in management. The representative of labor had no right for discussion or negotiation but received notification only, and the time of enforcement was ‘immediately after official announcement’. Gang, Hyun-ju. *supra* note 5.

2. Analysis and evaluation of the changes of the Minimum Wage Act

(1) Economic Growth and development of the Minimum Wage Act

The Labor Standards Act had been changed in a subordinate and limited manner under the goal of economic development, and has had too little execution power to meet its original purpose. The act had very good content from the beginning, comparable to that of developed countries, but it was not as good as it looked as it had little implementation capability. Through several amendments over a period of 20 years after its establishment, the Labor Standards Act attempted to improve its implementation power while actualizing the level of protection of the rights and interests of workers. Even in the 1970s, 10 years after the launching of the economic development plan, however, the goal of its amendments to narrow the gap with reality was not met under the government that maintained its economic growth first policy claiming ‘Growth First, Distribution Later’. For this reason, the need of workers for proper distribution, who had to accept unreasonable and inferior working conditions due to the quantitative expansion of the economy, grew bigger.

Of the many problems resulting from a lack of the act's implementation power, the one that affected workers' living conditions the most, was the problem of wages. Considering the importance of the issue of guaranteeing a minimum level of wages needed to lead a life worthy of human dignity through labor, content regarding this issue was separated from the existing Labor Standards Act, and the Minimum Wage Act was enacted. Immediately before the declaration of democratization in 1987, the Minimum Wage Act

was ratified to define the minimum level of wages needed to maintain human dignity. Later, the amendment of the Constitution clarified its basis and at the same time, prescribed the duty of the government to execute the minimum wage system.

The economic policy remained unchanged, still set to the government-driven economic growth first scheme. However, that the government took the initiative to reach agreement on the issue of wages through legislation in response to improved awareness of workers and the increasing needs for distribution, differentiates South Korea's approach to this issue from that of many other countries which sought to address it through labor-management autonomy. This was a structure with which the government was able to more easily reorganize and implement the wage issue in relation to both labor-management relations and the protection of basic rights and interests of workers according to its economic policies and outcomes, and eventually this also illustrates how the labor law were in fact subordinate to economy through the process of its change and development.

(2) The Minimum Wage Act and its normative power

In an effort to address serious problems of distribution structure which has been a threat to the national security, the Fifth Republic of Korea amended the Labor Standards Act[35], aiming to ‘guarantee the human dignity’, separated the Minimum Wage Act from the Labor Standards Act, and

35) The amendment prohibited the differential rate of retirement allowance by job classification in a single business, raised the order of prior payment for wage claim, imposed the joint liability on immediately preceeding contractor to secure labor wages in subcontract projects, enabled operation in the unit of week under agreement to relax the stiffness of working hours, adjusted working hours for under-aged workers, and enabled the jail sentence for overdue wage.

enacted it independently. As in the previous enactments and amendments of the Labor Standards Act, however, the government tried to lead the move to guarantee fair wages rather than resolving the distribution issue through labor-management discussion, thoroughly controlling collective actions of labor unions, and this was quite a political move to seek common interests of labor and management[36] and encourage harmony between labor and management.

The minimum wage scheme, which was separated and codified independently at that time, sought to stabilize the society by guaranteeing the improved lives of low wage workers who did not receive less than the minimum wage due to the intensified distribution problem. Legalized led by the government rather than through collective bargaining between labor and management, the minimum wage scheme is meaningful in its establishment, but its normative power is still limited.

Severe labor disputes took place because the problem of unbalanced distribution was not addressed properly due to the low normative power of the Labor Standards Act and the Minimum Wage Act that had been enacted and amended since the declaration of democratization. To bridge the gap between reality and the law, the government continued to amend the Labor Standards Law. On one hand, the government adjusted the level of protection suitable to reality, and on the other hand, it gradually increased coverage and reinforced its normative power by improving penal provisions.[37]

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36) The National Assembly. December 26th, 1980. The meeting minute of the National Security Legislative Council Economy Ⅱ Committee No.14, p2.

37) The government expanded the coverage of the Labor Standards Act and shortened working hours. It introduced the remedial procedure of dismissal and reinforced penal provisions. It also expanded the coverage of the Minimum Wage Act.

3. Analysis and evaluation of the changes of the Act on Equal Employment for Both Sexes

(1) Economic growth and development of the Act on Equal Employment for Both Sexes

The economy can go forward or backward with the influence of legal implementation. In contrast, economic development may lead to the enactment, amendment, or implementation of law. In such cases where the law and economy made progress through mutual influence, the progress of the Act on Equal Employment for Both Sexes is the one in which economic growth has had a particularly strong influence on legislation.

Although working women played an important role in labor, which is the engine of the economy, under the impoverished economic circumstances of the 1950s and under the slightly improved situation of the 1960s, discussions on gender equality in employment rarely occurred, since women were still vulnerable members of society. Working women, who played a pivotal role in economic growth during the industrialization era, were discriminated against compared to male workers in every working issue, including wages, and this led to the legislation of the ‘Act on Equal Employment for Both Sexes’ in 1987, in response to the increasing social participation of well-educated women and their demands. Since then, the economic growth rate and this act have followed the same path relatively continuously in their development.

<Table 3> Economically active female population[38)]

Unit : 1,000 persons, %

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Female population aged 15 or older	19,220	19,405	19,683	19,899	20,086	20,273	20,496	20,741	20,976	21,254
Economically active female population	9,418	9,690	9,860	10,001	10,092	10,139	10,076	10,256	10,416	10,609
Female economic activity rate	49	49.9	50.1	50.3	50.2	50	49.2	49.4	49.7	49.9

The first amendment in April 1989, the second in August 1995, and the third in February 1999 are characterized by the addition of a definition of discrimination, equal pay for work of equal value, and penal provisions to reinforce the effectiveness of the law, respectively. The act also suggested specific measures for equal employment by prescribing a prohibition on requests for physical conditions or unmarried status. These provisions can be said to be much improved regarding equal employment, imposing duties, such as the implementation for employers of training to prevent sexual harassment in the workplace, reprimands of assailants, and prohibitions on disadvantageous treatment of victims.

As women's social participation increased and their economic activities rose, the burden on working women also increased, who had to hold down a job and run a household and engage in childrearing at the same time as

38) Cho, Sung-hye. *supra* note 17, p40.

‘working moms’. After childbirth, working women had no choice but to quit work due to the burden of childrearing, and this resulted in huge losses not only for the individual but also for society due to a decrease in labor population. To make it worse, young working women's avoidance of marriage and childbirth led to a drop in birth rates, which became a serious social problem. Accordingly, in order to support childrearing for women, who account for almost half of the labor population, so that they could successfully maintain both a job and a household without giving up their job due to marriage and childrearing or avoiding marriage and childbirth, and ultimately solve the problem of low birth rates, the Act on Equal Employment for Both Sexes was renamed the Equal Employment Opportunity and Work-Family Balance Assistance Act on November 23, 2007. The main contents of the amendment are as follows：

The Minister of Labor shall conduct a fact finding survey on a regular basis to check the status of gender discrimination improvement, maternal instinct protection, and work-family balance in workplaces. (Article 6-3 inserted)

If a person closely related to business such as a customer makes an employee feel sexual humiliation or disgust and he or she makes a request for solving the situation, his or her employer must strive to take a possible action, such as changes of the place of work and re-placement, and may not dismiss an employee or treat him or her disadvantageously for claiming damages due to sexual harassment or for rejecting a sexual request from customers. (Article 14-2 inserted)

In addition, if an employee requests leave for childbirth by his spouse, the employer must provide leave of 3 days. An employee may

not request such leave after 30 days of his spouse's childbirth. (Article 18, Article 14-2, inserted)

In addition, if an employee requests shortened working hours for childrearing (15 hours to 30 hours per week) instead of childrearing leave, the employer should approve of such. If the employer disapproves, he or she shall notify the employee of the reason for such in writing. The working conditions of the employee under shortened working hours for childrearing shall be determined between the parties to the labor relationship in writing. (Article 19-2, Article 19-3, inserted)

The Minister of Labor shall conduct research and promotional programs and provide professional consulting service to employers and employees in order to support the introduction and spread of the work-family balance program, and may entrust these tasks to public institutions or the private sector.[39)]

The Equal Employment Opportunity and Work-Family Balance Assistance Act comprises four chapters[40)] that include provisions on equal employment opportunities for both sexes, which formed the purpose for the enactment of the Act on Equal Employment for Both Sexes, as well as provisions on the protection of maternal instinct and support for work-family balance, which were added with the renaming of the Act to the Equal Employment Opportunity and Work-Family Balance Assistance Act. In terms of content, the

39) The Ministry of Government Legislation. Korea Ministry of Government Legislation, Reasons for the Enactment and Amendment of the Act on Equal Employment for Both Sexes

40) The content of substantial law comprise：Chapter 1 General Provisions, Chapter 2 Equal Opportunities and Treatments for Both Sexes in Employment, Chapter 3 Protection of Maternal Instinct, and Chapter 3-2 Work-Family Balance Assistance. Cho, Sung-hye. *supra* note 17, p58.

act is principally divided in two : equal employment, and work-family balance. If support for work-family balance is to seek gender equality, however, eventually these two different goals can be considered to be in complementary relation to achieving a common goal, which is the reason for changing this act from the Act on Equal Employment for Both Sexes to the Equal Employment Opportunity and Work-Family Balance Assistance Act.[41)]

Nevertheless, it is still doubtful whether the goal of work-family balance, or improving birth rates through support for childbirth and childrearing by working women, can be reconciled the goal of eliminating employment discrimination, the objective of gender employment equality, adequately enough to be defined in a single law. These two purposes were defined in a single law since one is thought to stimulate and complement the other. However, there is concern that the law may be one-sided and downplay the other aspect rather than creating complementary relations and synergy.

The act on work-family balance introduced the spouse childbirth leave program and permitted employees to use shortened working hours during

41) The purpose of the Act on Equal Employment for Both Sexes is : to achieve equal employment opportunities for both sexes by guaranteeing equal opportunities and treatment in employment for both sexes according to the idea of equality in the Constitution, and protecting maternal instinct and providing support for work-family balance and occupational capability development and employment promotion for women. After amendment of the act to the Equal Employment Opportunity and Work-Family Balance Assistance Act, however, the purpose of the act is : "to achieve equal employment opportunities for both sexes by guaranteeing equal opportunities and treatment in employment for both sexes and promoting the protection of maternal instinct and the employment of women, and at the same time, to contribute to improving quality of life for the people by providing support for work-family balance for workers. Simply put, the final purpose of the previous law is to achieve equal employment for both sexes, while that of the amended one is to achieve equal employment for both sexes and at the same time contribute to improving quality of life for the people by supporting work-family balance. This means the amendment set its ultimate goal as contributing to improving quality of life for people by achieving equal employment for both sexes and work-family balance.

childrearing and take leave or time off from work. It also specified support for a return to work after shortened working hours, guaranteed flexible use of childrearing leave (allowing it to be split), and introduced leaves of absence for family care. It may be deemed to have the same directing point as equal employment for both sexes in that it seeks to help not only working women but also their male spouses to maintain both childrearing and career at the same time. However, this interpretation may be too ideal, and fail to consider the forms of labor and reality. When comparing the proportion of female and male workers among non-regular workers and employees of small businesses of less than 10 employees, it was found that the proportion of female workers was much higher than that of male workers.[42] Given the economic activity rate of women which has continuously stayed at over 50% since 2005, it is understood that most working women are non-regular or small business employees rather than regular or large company employees. This can be attributed to the harsh reality of gender equality in employment, and also to the fact that women cannot afford to

42) <Table 4> Distribution of non-regular employees by gender Unit : 1,000 persons, % 2012

	2012			
	Total	Male	Proportion	Female
Regular	11,823	7,377	62.4	4,445
Non-regular	5,911	2,757	46.6	3,154
- Temporary	3,403	1,668	49.0	1,735
- Hourly paid	1,826	506	27.7	1,320
- Atypical labor	2,286	1,202	52.6	1,084
* Daily	871	582	66.8	289
* Dispatched	214	101	47.2	114
* Labor service	682	371	54.4	310
* Special type	545	187	34.3	358
* Tele-working	69	10	14.5	59

Source : Additional Research on Statistics Korea. Economically Active Population; Cho, Sung-hye. Cho, Sung-hye. *supra* note 17, re-cited, p44.

take regular work requiring demanding duties as they are still the main agent of the household and childrearing according to existing gender roles with regard to the issue of work-family balance. In other words, support for work-family balance is deemed to enable women to run both childrearing and housework more easily, so that they can play a role as the main agent of family care labor rather than supporting both men and women to do both tasks together as an essential solution,[43] and eventually leads women to be responsible for both housework and economic activities. In this sense, it is difficult to regard this act as a law for equal employment for both sexes or a law for true work-family balance.

The reasons well-educated working women actively employed same as male workers in economic activities and social life hesitate about marriage and childbirth, include a wage gap still ranked lowest among OECD member countries even 25 years after enforcement of the Act on Equal Employment for Both Sexes, avoidance of employing female workers on the plea of protection of maternal instinct, and invisible discrimination still existing against women in the workplace. These working women who raise their voices in economic activities and the labor market, in overcoming all these obstacles, had to be fearful of the severance of their career due to childbirth and childrearing, and were pushed to delay childbirth with society showing no consideration for childbirth and childrearing, leading to the serious problems of a low birth rate and aging in society.

To respond to the low birth rate and aging problem, the government implemented its First Plan for an Aging Society and Population (2006-2010), then launched a Second Plan for Aging Society and Population (2011-2015).[44]

43) Cho, Sung-hye. *supra* note 17, p58

44) Lee, Sam-sik. Jan. 2012. Policy change and prospects for the low birth rate and aging problem in 2012, Public health and social welfare forum, p52-64 (52); Cho,

As part of this initiative, it also enacted the Act on Promotion of the creation of a Family-friendly Social Environment (Act No.8695) on December 14th, 2007 (enforced on June 15th, 2008) to disseminate family values and expand the Best Family-Friendly Management certification program. The government also enacted the Act on Promotion of Economic Activities for Career-Break Women (Act No.9101) on June 5th, 2008 (enforced on December 6th, 2008) in order to support the financial independence and self-realization of women through promotion of economic activities for career-break women.[45)]

Renaming the Act on Equal Employment for Both Sexes to the Equal Employment and Work-Family Balance Assistance Act with an attendant change of purpose was part of this move to raise the birth rate. However, it is necessary to think carefully about how much changing the Act on Equal Employment for Both Sexes, aimed at gender equality in employment, to the Equal Employment Opportunity and Work-Family Balance Assistance Act, focused more on raising the birth rate and supporting childrearing which is inappropriate for promoting equal employment for women being still based on existing gender roles, could accord with the original purpose of the act and whether or not the amendment would dilute the essence and change the original direction of the act.

(2) The Act on Equal Employment for Both Sexes and the contribution of women's labor

Derived from the equal treatment provision of the Labor Standards Act, the Act on Equal Employment for Both Sexes[46)] was independently enacted.

Sung-hye. *id.*, re-cited, p57.

45) Cho, Sung-hye. *supra* note 17, p57.

46) Whereas the preceding equal treatment provision prohibited discrimination after employment, the Act on Equal Employment for Both Sexes prohibits discrimination from the employment stage, and thus it is deemed to have made a progress in the right of women

It seems that the political background to its enactment is the joining of the new military government to the United Nations after the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) of 1979. In terms of economy and society, it seems that the government had pressure to correct discrimination against women in employment as the social activity rate of well-educated women gradually increased.

Hastily enacted due to pressure from the international society and domestic political and social situations, the Act on Equal Employment for Both Sexes was first amended in 1989, 2 years after its enactment, in a way to improve its precision through newly inserted provisions such as the definition of discrimination and equal pay for work of equal value and also improved its effectiveness by reinforcing its penal provision.

The Act on Equal Employment for Both Sexes, which prohibited discrimination from the employment stage, spoke for women who participated in social activities, and later the act continued to increase its coverage of equality, for example, by prohibiting discrimination against women's appearance and enabling male workers to apply for childrearing leave. However, the Act on Equal Employment for Both Sexes was renamed the Equal Employment Opportunity and Work-Family Balance Assistance Act in an effort to support childrearing for women, who account for almost half of the labor population, so that they could successfully maintain both a job and a household without giving up their job due to marriage and childrearing or avoiding marriage and childbirth, and ultimately solve the problem of low birth rates. This amendment was made to add a new goal of realizing gender equality in employment by protecting maternal instinct and promoting employment of women and contributing to the improvement of the life

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to be employed.

quality of the people by supporting work-family balance to the existing Act on Equal Employment for Both Sexes originally aimed to protect equality of male and female workers in employment and labor. It is doubtful, however, whether these two goals can co-exist in a single act. In particular, work-family balance has the stance of shifting burden of housework and childrearing into working women based on the existing gender role and then seeking to mitigate it through legal system, and it is doubtful about how much this attitude can contribute to realizing equal employment for working women. Given the fact that a majority of the form of female employment is inclined to non-regular or fixed-term positions, which is due to the burden of housework and childrearing imposed on women, it will be more appropriate to institutionalize plan for helping female workers inclined to non-regular and fixed-term positions to move to regular and professional jobs on the Act on Equal Employment for Both Sexes and prescribe the support for protection of maternal instincts and housework and childrearing in another independent law, rather than assuming that protection of maternal instincts and housework and childrearing are the area of women. This is also in line with the direction of the legislation for protecting working women which has been made relatively consistently and continuously along with economic growth.

4. Analysis and evaluation of the changes of the non-regular workers law

(1) Economic growth and development of the non-regular workers law

From the time Korea was impoverished after its civil war, South Korea maintained an economic growth first policy until attainment of rapid com-

pressed government-led economic growth, and consequently many values, including the human rights of workers, were ignored and not properly protected during that period. Despite having played an important role in economic growth, many vulnerable members of society, especially women and non-regular workers, were directly or indirectly discriminated against with regard to all working conditions, including employment, wages, and welfare just for being female or non-regular in work. To employers, however, such discrimination in working conditions was recognized as an efficient, low-cost way to use workers with less employment burden, and thus the number of non-regular workers continued to increase although it violated the Employment Security Act (Article 33, Paragraph 1)[47] and the provision on the exclusion of intermediary exploitation (Article 8) in the Labor Standards Act.[48]

<Table 5> Total wages per hour for regular and non-regular workers[49]

Unit : KRW, %

	2010	2011
Regular workers	14,388	15,299
Non-regular workers	8,236	9,372
Wage gap	12.6	9.1

Source : Labor by employment type fact finding survey (Ministry of Employment and Labor, conducted annually in June)

47) Article 33 (Laborer supply business) One may not run a labor supply business without the approval of the Ministry of Labor. If the Ministry of Labor intends to approve a request for a labor supply business according to Paragraph 1, the case shall be reviewed by the Council for Employment Policy Consultation. Targets and requirements for approval stated in Paragraph 1 shall be determined by Presidential decree.

48) Lee, Sang-hee. 2002. L*egal issues regarding the Act on Protection, Etc. of Temporary Agency Workers and its improvement plan, Journal of Labor Law*, Iss.4, p77-106(77); Cho, Sung-hye. *supra* note 17, re-cited, p59.

49) Ministry of Employment and Labor. Fact-finding survey of labor by employment type; Cho, Sung-hye. *supra* note 17, re-cited p42.

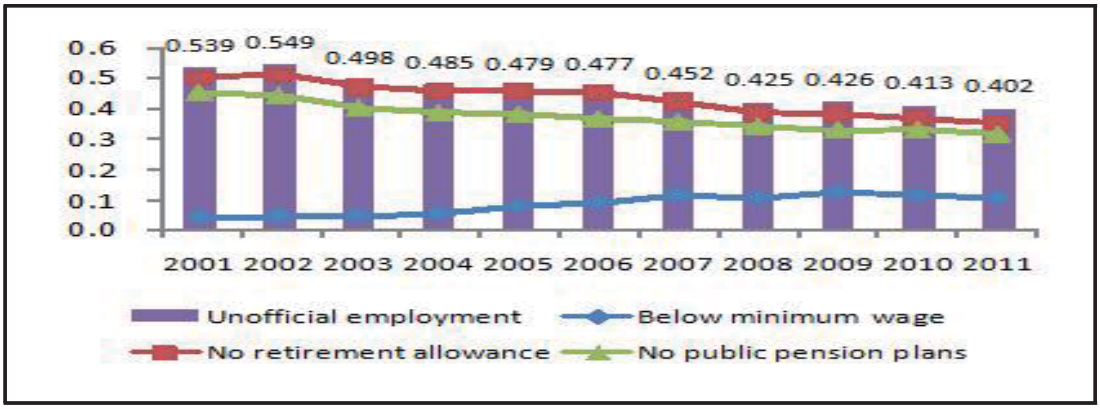
<Table 6> Non-regular employment trends[50)]

Unit : 1,000 persons

		2008 1H	2008 2H	2009 1H	2009 2H	2010 1H	2010 2H	2011 1H	2011 2H	2012 1H	2012 2H
Proportion	Wage worker	100	100	100	100	100	100	100	100	100	100
	Regular	64.8	66.2	66.6	65.1	66.9	66.6	66.2	65.8	66.7	66.7
	Non-regular	35.3	33.8	33.4	34.9	33.1	33.3	33.8	34.2	33.3	33.3
	Temporary	20.3	20.4	19.8	21.3	19.3	19.2	19.7	19.7	19.5	19.2
	Fixed-term	14.3	14.7	15.9	17.1	14.4	14.6	14.4	15.2	14.7	15.3
	Hourly-paid	8.1	7.6	8.2	8.7	9.2	9.5	9	9.7	9.8	10.3
	Atypical	14.6	13.3	13.5	13.9	13.1	13.4	13.5	13.9	13	12.9

Source : Statistics Korea

[Figure] Unofficial employment proportion trends[51)]



Source : Statistics Korea Survey on economically active population : additional survey by labor type (August of each year)

50) Statistics Korea; Cho, Sung-hye. *supra* note 17, re-cited p 42.

51) Kim Gi-sun. An analysis and evaluation of labor law centered on the Labor Standards Act, the Minimum Wage Act, the Act on Equal Employment for Both Sexes, and the non-regular workers law, Korea Legislation Research Institute Workshop Material (May 20th, 2013), p31.

<Table 7> Unofficial employment distribution by type[52)]

(Unit : 1,000 persons, %)

	Under minimum Below		No retirement allowance		No public pension plans		Unofficial employment	
All	1,899	(100.0)	6,181	(100.0)	6,108	(100.0)	7,044	(100.0)
Non-compliance	1,758	(92.6)	1,658	(26.8)	4,946	(81.0)	5,539	(79.4)
Exemption	141	(7.4)	4,522	(73.2)	1,162	(19.0)	1,452	(20.6)
Special labor	75	(3.9)	604	(9.8)	593	(9.7)		
Housework service	66	(3.5)	149	(2.4)	149	(2.4)		
Service of less than 1 year			3,972	(64.3)				
Labor of less than 15 hrs per week			452	(7.3)	452	(7.4)		

Source : Statistics Korea (Aug. 2011) Economically active population census additional survey by labor type

<Table 8> Unofficial employment scope[53)]

(Unit : 1,000 persons, %)

			Size	Ratio
All			17,510	(100.0)
Official employment			10,466	(59.8)
Unofficial employment			7,044	(40.2)
	Exclusion from benefits	Minimum wage	1,899	(10.8)
		Retirement allowance	6,181	(35.3)
		Public pension plan	6,108	(34.9)

52) Kim Gi-sun. *id*., re-cited, p32

53) Kim Gi-sun. *id*., re-cited, p30

				Size	Ratio
	Exclusion from benefits distribution	1 exclusions	Minimum wage	174	(1.0)
			Retirement allowance	706	(4.0)
			Public pension plan	543	(3.1)
		2 exclusions	Minimum wage & retirement allowance	57	(0.3)
			Minimum wage & public pension plan	146	(0.8)
			Retirement allowance & public pension plan	3,896	(22.2)
		3 exclusions	Minimum wage, retirement allowance, and public pension plan	1,522	(8.7)

Source : Statistics Korea (Aug. 2011) Economically active population census additional survey by labor type

In general, non-regular workers include temporary workers, hourly-paid workers, and atypical workers. 'Temporary workers' refers to non-regular workers classified based on 'continuity of employment', and is divided into workers with a fixed labor contract and those without a fixed labor contract but who can continue to work through contract renewal, and workers who are not expected to continue to work for involuntary reasons. 'Hourly-paid workers' refers to non-regular workers, classified based by 'working time', who work for short periods (part-time workers). Finally, 'atypical workers' refers to non-regular workers classified by 'labor delivery type', divided into dispatched workers, service workers, special workers, in-home workers (telework, domestic), and daily (on-call) workers.[54)]

54) Statistics Korea. Status of non-regular employment; Cho, Sung-hye. *supra* note 17, re-cited, p43

The number of non-regular workers soared in the 1990s, and has made up over half of all wage workers for a long period. The sharp increase in non-regular workers is attributable to Korea's economic policy placing growth as its top priority and companies which pursue profits only, receiving financial and social support from the government under the aegis of such policy. Companies reduce costs by employing non-regular workers that they can easily dismiss, rather than employing regular workers, and escape the burden of labor management and avoid the responsibilities of employers pursuant to the Labor Standards Act by employing workers via labor service providers.[55] If the justification for the existence and ultimate goal of companies is considered to be short-term pursuit of profits, employing non-regular workers can be the optimal management strategy. In addition, if companies record maximum profits by reducing costs and obligations, and this leads to a quantitative expansion of the national economy by contributing to capital increase, non-regular labor is a necessary employment form for economic growth, and thus labor law should activate it rather than place limits on it. This was the stance of the government and business circles that supported the introduction of the dispatched worker system and the passage of the Act on the Protection, Etc. of Fixed-term and Part-time Workers. To a certain degree, it was a realistic measure to secure employment flexibility and follow IMF demands for restructuring. From the business circle viewpoint, therefore, labor's demand for the abolition of non-regular jobs or the conversion of non-regular jobs to regular ones is seen only as a structural change harmful to economic growth, resulting in a weakening of global competitiveness for companies and job losses due to the relocation of companies overseas.

55) Cho, Sung-hye. *id*., p42.

On the other hand, it should be noted that the voice of labor that has asserted conversion of non-regular workers to regular workers rather than recognizing non-regular labor and supporting the establishment and implementation of policies and laws needed to protect their rights and interests has not been raised in their interest only. Securing working conditions such as wages to the level of regular workers is not the only purpose of labor's demand for conversion of non-regular workers into regular ones. Rather, it should be considered, from a more macroscopic view, how discrimination against non-regular workers will affect society. Labor has maintained that due to its inherent inability to secure stability of employment, non-regular labor will deteriorate the employment stability of regular workers and intensify the dual structure of the labor market, consequently resulting in a shrinkage of the labor market. This will worsen quality of life for workers and their family/ies, causing social instability, and ultimately become a threat to the pursuit of profits through growth, which is the highest goal of business circles. Considering the high proportion of non-regular workers in South Korea, unmatched among OECD member countries, the IMF also warned that the dual structure of the labor market had deteriorated the Korean economy and would continue to hinder economic development.

Due to discrimination against non-regular workers, who emerged as another important worker group alongside regular workers in Korea, and a lack of protection mechanisms for them, non-regular workers laws, such as the Act on Protection, etc. of Dispatched Workers[56] and the Act on Protection, etc.

56) Details of the dispatched labor law agreed to in the Social Pact for Overcoming Economic Crisis (Feb. 6th, 1998) are as follows :
The government submitted the following legislative bill for the Act on the Protection, Etc. of Temporary Agency Workers to the provisional session of the National Assembly in February 1998.
- Business types for dispatched labor

of Fixed-term and Part-time Workers[57], were enacted after debate.

• Business types designated by Presidential decree, which require expertise, skills, or experience.
• Dispatched labor is permitted when a position is vacated due to childbirth, disease, or injury, or manpower is required temporarily or intermittently unless the business type for dispatched labor is prohibited by law. (Required to faithfully discuss with the representative of workers or the majority labor union in advance)

- Dispatch period : 1 year or shorter (Renewal for another year if agreed upon by the worker)
- Protection of temporary agency workers
• Prohibition of discrimination against temporary agency workers by other workers.
• Prohibition of dispatch contract termination due to the gender, religion, or standing of temporary agency workers.
• Give advance notification of employment conditions to temporary agency workers.
- Restrictions on worker dispatch
• It is prohibited to dispatch workers to a workplace on strike for the purpose of affecting the strike
• After dismissal for managerial reasons, use of temporary agency workers for relevant business is prohibited for a certain period defined by Presidential decree.
- Clarification of user responsibilities with regard to temporary agency workers
• Dispatch provider : Responsible for wages and industrial accident compensation
• User of temporary agency workers : Working time, holidays, industrial safety and health, etc.

The Korea Tripartite Commission. The Social Pact for Overcoming Economic Crisis (Feb. 6th, 1998), p9; Cho, Sung-hye. supra note 17, p63. Footnote 50 re-cited

57) This act stipulates that fixed-term employees may be employed for 2 years or less (For renewal of fixed-term labor contract, the total term should not be more than 2 years) (Article 4 Paragraph 1) However, fixed-term workers may be employed for more than 2 years (Article 4 Paragraph 1) provided :

The term needed to complete a project or certain work is determined.
A certain position needs to be replaced by another until the employee returns from their leave of absence or dispatch.
An employee will attend a school or job training and the duration has been determined.
A labor contract with the elderly specified in Article 2, Employment Promotion for the Elderly Act, Item has been signed.
Use of expertise and skills is required.
The job is provided according to the government's welfare policy and unemployment programs.
There is a rational reason in accordance with Items 1 or 5, specified by Presidential decree.
If a fixed-term worker is employed for more than 2 years even though such does not fall

However, it is doubtful how effectively the non-regular workers law has actually protected the rights and interests of non-regular workers through the legalization of non-regular workers, which was the original purpose of the law. When it was first introduced, the non-regular workers law was aimed at eliminating discrimination against non-regular workers and guaranteeing employment stability and working conditions at the level of regular workers. When it was actually legalized and applied to employment relations, however, employers attempted to avoid implementing the purpose of the law and paying the corresponding economic costs, and consequently applying the law brought about results against the interests of workers.[58)]

One example showing how the law designed to protect non-regular workers worked to the disadvantage of non-regular workers, is the intra-subcontract problem. Following the trend of seeking to reduce labor costs and make labor flexible, employers used illegally dispatched workers rather than employing regular workers,[59)] although before the ratification of the dispatched

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under any of the above-mentioned reasons, or if such reason has disappeared, he or she shall be regarded as having signed a non-fixed term labor contract. (Article 4 Paragraph 2) In addition, users should not discriminate between fixed-term or part-time employees and non-fixed term workers responsible for the same or similar work in a project or workplace solely due to their being a fixed-term or part-time worker. (Article 8, Paragraphs 1 and 2) If fixed-term or part-time employees receive discriminatory treatment, they may request correction from the Labor Relations Commission within 3 months. (Article 9 Paragraph 1) Korean Ministry of Government Legislation; Cho, Sung-hye. An analysis and evaluation of the labor law change process centered on the Labor Standards Act, the Minimum Wage Act, the Act on Equal Employment for Both Sexes, and the non-regular workers law, Korea Legislation Research Institute Workshop Material (May 20th, 2013), p72 re-cited.

58) The Act on the Protection, Etc. of Fixed-term and Part-time Workers stipulates that a fixed-term labor contract that exceeds 2 years shall be regarded as a non-fixed term contract. This provision was originally intended to change fixed-term workers, who are non-regular workers, to regular ones. However, this protective provision rather places limits on the employment of workers as employers use a labor contract of less than 2 years to avoid their obligation to convert non-regular contract to regular ones after 2 years.

59) At the time, it was technically impossible to accurately check how many labor dispatch

workers law, using workers through labor service providers was illegal as it violated the Employment Security Act (Article 33, Paragraph 1)[60] and the provision on the exclusion of intermediary exploitation (Article 8) of the Labor Standards Act.[61] For this reason, while the number of dispatched workers increased, most were not protected by labor law, and there was a huge gap between reality and the law as the law did not recognize dispatched labor itself except for certain business types. In order to protect dispatched workers by legalizing them if it was impossible to stop illegal use of workers via labor service providers, the government and business circles began to talk about the Act on the Protection, Etc. of Dispatched Workers. Although the dispatched workers law was intended to make employers in business types not permitted to use dispatched workers employ workers to secure employment stability, employers chose to avoid the regulations and use illegal non-regular intra-subcontract workers whom they

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businesses existed, and the only official statistical information was the Aggregate Business Statistics Report published by the Economic Planning Board. According to this survey, the number of labor providers rose three times in 5 years from 398 in 1986 to 1,363 in 1991. The number of employees also increased from 8,814 to 27,072 over the same period. The total revenue of these companies in 1991 also recorded 495.7 billion won, up 7 fold from 1986. Kim, Yu-sung. 1994. *A few tasks in the era of new employment policy*, Seoul Nat'l Univ. Society of Labor Law. Labor Study Iss.4, 3-24 (5); Cho, Sung-hye. supra note 17, p60 re-cited.

60) At that time, Article 33 of the Employment Security Act stipulated as follows：
Article 33 (Laborer supply business) ① One may not run a labor supply business without the approval of the Ministry of Labor.
② If the Ministry of Labor intends to approve a request for a labor supply business according to Paragraph 1, the case shall be reviewed by the Council for Employment Policy Consultation.
③ Targets and requirements for approval stated in Paragraph 1 shall be determined by Presidential decree.

61) Lee, Sang-hee. 2002. *Legal issues regarding the Act on Protection, Etc. of Temporary Agency Workers and its improvement plan*, Journal of Labor Law, Iss.4, p77-106(77); Cho, Sung-hye. supra note 17, p59 re-cited.

were able to use without the burden of employment. Eventually, the dispatched workers law limited business types for dispatched labor to stop this increase in the number of dispatched workers and protect workers under the umbrella of the labor law, but this led to the appearance of illegal intra-subcontract workers, who are also non-regular workers.[62]

At present, there are principally two types of intra-subcontract regarded as illegal in South Korea. One is when an implied employment relationship is recognized as the subcontractor does not exist and the contractor employs intra-subcontract workers practically, as it directs and supervises them.[63] The other is when the contractor is recognized to have received labor from an illegal dispatched service provider (subcontractor) since, despite the existence of the subcontractor, the contractor is regarded as the user of dispatched workers in terms of directing and supervising them.[64] This means that whether or not the dispatched labor is illegal is determined on the assumption that the contractor doesn't have the authority to direct and supervise subcontract workers.[65]

From the viewpoint that the illegal intra-subcontract problem resulted from the dispatch law, there are opinions that illegal intra-subcontract wouldn't have been spread indiscriminately if the dispatch law had not limited the business types for dispatched labor, leaving it easy to use dispatched workers.[66] As pointed out earlier, however, it is also possible that employers preferred intra-subcontract to completely avoid the burden of labor management

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62) Cho, Sung-hye. *id*., p75.

63) Supreme Court. July 10th, 2008. Adjudication 2005 Da 75088 Decision : Cho, Sung-hye, *id*., re-cited p75.

64) Supreme Court. September 18th, 2008. Adjudication 2007 Du 22320 Supreme Court Decision : Cho, Sung-hye, *id*., re-cited p76.

65) Cho, Sung-hye. *id*., p75.

66) Cho, Sung-hye. *id*., p75.

since they could not get complete exemption from such responsibilities when they used dispatched workers. In addition, given the fact that outsourcing has already become common through many years of economic globalization, it is also difficult to predicate that the production method of intra-subcontract appeared due to the dispatch law limiting the business types for dispatched labor.

However, there is also an opinion that legal labor dispatch is not necessarily more advantageous to workers than illegal intra-subcontract given the fact that both of them are all indirect employment anyway, especially when the employer, whether it is a dispatch labor user or a contractor, has no choice but to direct and supervise workers.[67] Those who are in this stance maintain that if the dispatch law is somewhat deregulated, it is not necessary to regard intra-subcontract as illegal indiscriminately, and that intra-subcontract can be implemented legitimately.

This opinion is quite different from the stance of labor, which has desperately opposed the dispatch of workers itself since the introduction of the dispatch law. They assert that legalizing labor dispatch will do harm to the employment stability of regular employees and worsen the dual structure of the labor market and consequently shrink the labor market in the long run. They also say that increase in the number of dispatched workers will make negative influence on the labor relations and the labor's three primary rights for both dispatched workers and the companies using dispatched workers, and that it is also concerned that users of dispatched workers are likely to vigorously seek to use dispatched workers to weaken the organizational power of labor unions.[68]

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67) Cho, Sung-hye. *id*., p76.

68) Kim, Hyun-bae. *A Study on Labor Dispatch Scheme*, Machinery Industry, p50-55; Kim,

It seems impossible to reach an agreement between labor and management since they have distinctively different stance on the dispatch law, as seen above. Therefore, it is deemed ideal to resolve this problem through labor-management agreement.

Another example in which law intended to protect non-regular workers worked rather against the protection of their rights and interests is the provision regarding the conversion of fixed-term contract to non-fixed term contract after 2 years. The protection provision that a fixed-term labor contract shall be regarded as a non-fixed term labor contract if the contract term exceeds 2 years was originally placed to secure the employment stability of fixed-term workers. However, employers attempt to avoid the burden of signing non-fixed term contracts by terminating the contract before it exceeds 2 years. Even when both the employer and the employee want employment of more than 2 years and thus consider conversion into a regular position, regular employment is often impossible due to the difference in occupational group or it is also often impossible to employ more than a certain number of regular employees due to costs.[69] For this reason, a non-fixed term contract position was suggested as an alternative to the conversion into a regular position. However, this employment type also cannot improve the low wage and inferior working conditions of a non-regular position since it only provides the non-fixed term without the welfare and wage benefits of regular positions, and thus it is deemed to be the optimal improvement method although it may positively affect employment stability.

Yu-sung. 1994. A few tasks in the era of new employment policy, Seoul Nat'l Univ. Society of Labor Law. Labor Study Iss.4, 3-24(5); Cho, Sung-hye. supra note 17, p61 re-cited.

69) Cho, Sung-hye. *id*., p76.

Therefore, some suggest that the provision regarding conversion to a non-fixed contract position after 2 years be more realistically deregulated by adding an exceptional provision that allows the extension of the term by adding an exceptional provision that allows the extension of the contract term by a collective agreement or an agreement between the parties to the labor relations.[70)]

It is deemed that the non-regular worker problem in South Korea resulted from the polarization of the labor market in which regular workers (insiders) are protected safely under law while non-regular workers and unemployed persons (outsiders) work unstably under the inferior conditions including low wages or are completely excluded from the labor market.

Although there is a discrimination correction system, it is difficult to expect that non-regular workers can actively request discrimination correction.[71)] Even when they request it, their short contract term is likely to terminate before the case is completed or although the case can be completed within their contract term, that will deteriorate the relationship with their employer and consequently the possibility of conversion to a regular position will be rather reduced. For this reason, it is difficult to expect this system to be activated.

(2) The law for non-regular worker protection and market competitiveness

Despite a sharp increase in the number of non-regular workers in the course of seeking corporate restructuring and management efficiency to

70) Cho, Sung-hye. *id*., p76.

71) Labor Relations Commission : As of March 2013, total 45 discrimination correction requests and total 4,836 requests for judgment were filed. Status of the receipt and processing of discrimination correction cases by Labor Relations Commission.

overcome the IMF exchange crisis, non-regular workers, due to the nature of non-regular employment, suffer from instable employment and inferior working and welfare conditions compared to regular workers. However, non-regular protection legislation, such as the Act on the Protection, Etc. of Temporary Agency Workers and the Act on the Protection, Etc. of Fixed-term Employees and Part-time Employees, has been continuously improved in an effort to provide institutional strategy to protect non-regular workers under the circumstance where dispatched labor itself is prohibited according to the Employment Security Act and also to seek employment stability by recognizing already prevalent non-regular labor as a form of labor and protecting it under the aegis of law.

The content of non-regular worker protection law includes prohibiting unfair treatment of non-regular workers in wages and other working conditions compared to regular workers engaged in the same or similar business, allowing workers treated unfairly without a rational reason to apply for its correction to the Discrimination Remedy Committee of the Labor Relations Commission, and levying a fine of negligence of 100 million won or below to employers who did not implement the discrimination remedy order of the Labor Relations Commission without a rational reason.[72] The dispatch law is characterized by the obligation of direct employment when the duration of dispatch labor exceeds the current legal dispatch period, and the fixed-term labor law also restricts the term of use of fixed-term workers to 2 years in order to stabilize the employment of fixed-term workers.

However, the non-regular workers law aimed to protect the rights and interests of non-regular workers and improve their employment stability rather resulted in the deterioration of employment stability especially when it was

72) Choi, Jae-hee. *supra* note 6.

not properly institutionalized due to the employers who sought to relieve their duty and burden of employment. In the business types designated for dispatched labor, illegal intra-subcontract appeared to replace dispatched workers, and most labor contracts of contract workers were signed for less than 2 years since employers wanted to avoid the obligation of converting fixed-term labor contract to non-fixed term one when the duration of service exceeds 2 years, and employers avoided renewal of contracts exceeding 2 years. This means the provisions were designed to protect non-regular employees rather push them out of their job.[73)]

It is not also easy to conclude whether it is desirable to abolish non-regular labor itself and convert it to regular labor as insisted by the labor world. Of various reasons for employers to prefer non-regular employees to regular ones, the most important reason is that non-regular labor provides employment flexibility and impose lighter wage burden to employers, and this is the matter directly related to corporate competitiveness. It is not right to focus most on the creation of corporate competitiveness and profits under the policy of 'Growth First, Distribution Later' as in the 1960s and 1970s, but it is not also desirable to weaken the global competitiveness of companies, which will lead to the increase in unemployment rates and negative influence on the national economy.

Therefore, instead of completely abolishing non-regular labor, it is more desirable to analyze the provisions of the current law that do harm to the rights and interests of non-regular workers and amend them to be practically

73) Those provisions made negative influence on non-regular workers : employers chose to replace nonregular workers by indirect employment such as dispatch of fixed-term workers and the intra-subcontract rather than converting non-regular workers to regular ones. Lee, Byung-hee. 2011. *Employment effects of three years of non-regular employee law*, Economic Development Study. Vol. 17, No.2, p245-269(258).

helpful. It is suggested that the provision of imposing the obligation of direct employment when the fixed term labor contract exceeds 2 years and the deregulation of the dispatched workers law as well as strict limits on business types for dispatched labor.[74] This improvement of legislation will protect the rights and interests of non-regular employees originally intended to be protected and at the same time contribute to maintaining the global competitiveness of companies since it will not increase their burden greatly. As there is a sharp conflict of opinion on the non-regular workers law between management and labor, however, it is the most important to seek a compromise between them through continuous dialog and discussion to secure future implementation of the law and its effectiveness.

74) Cho, Sung-hye. *supra* note 17, p80.

Chapter 4. Conclusions

Despite the enactment of a global-level labor standards act in 1953, South Korea saw the beginning of the 1960s without the law's effectiveness since it had a huge gap with reality. From the 1960s, the government put economic growth as the top priority and improved labor legislation according to its economic development plan. Because the government regarded it the most important to realize the quantitative expansion of corporate economic size in pursuing national economic growth, it controlled the enactment, amendment and implementation of collective labor relations law, which could be an obstacle to the quantitative expansion of companies, with continued change and development of individual labor relations law as a consideration in return.

With the development of individual labor relations law, the Labor Standards Act was gradually improved in a way to expand its coverage, narrowing the gap with reality, but was still insufficient to meet the distribution needs of workers since its normative power was still insignificant. The issue of compensation or distribution for the rapid economic growth was raised in the late 1970s, and as a result the Minimum Wage Act was independently ratified in 1986, which reflected the viewpoint of the government that focused more on securing the minimum level of living of the people in considering distribution of wealth. With the weak normative power, which is found as the weakness throughout the entire individual labor relations law, applying to the Minimum Wage Act as well, however, it is a problem that the below minimum wage rate or the minimum wage compliance rate is still very low despite the enactment and amendment of the act.[75)]

75) A recent study regarding this issue includes : Lee, Seung-ryeol, et al. 2012. *A study on*

After the exchange crisis in the 1990s, the number of non-regular workers against regular ones, including fixed-term workers and dispatched workers, increased tremendously under the pretext of reinforcing global competitiveness of companies and expanding the flexibility of the labor market. Despite the sharp increase in the number and role of non-regular workers in the labor market, dispatched labor itself was illegal according to the Employment Stability Act and there was no other relevant law. Accordingly, legislation of laws regarding non-regular workers was continued to protect the working conditions of non-regular workers and correct discrimination against them.[76] Pursuing profits and quantitative expansion with the thorough economic logic, however, employers contrived to devise methods to avoid their obligations stipulated in law within the boundary of law rather than protecting non-regular employees and providing them with welfare and benefits as prescribed in the non-regular workers law to reduce their burden of wages and employment. As a result, the non-regular workers law formed to protect the rights of non-regular workers was misused as a way to limit the welfare and benefits of non-regular workers. For this reason, non-regular workers who are under the working conditions below the level defined in the Labor Standards Act still account for more than 50% of the entire workers.[77]

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the international comparison of the minimum wage scheme implementation system : centered on the U.S., the U.K. and Australia, Korea Labor Institute.

76) The enactment of the Act on the Protection, Etc. of Fixed-term Employees and Part-time Employees, amendment of the Act on the Protection, Etc. of Temporary Agency Workers, and amendment of the Labor Relations commission Act.

77) It is especially concerned that unlike other countries, the proportion of fixed-term employees is larger than that of part-time employees. Ministry of Strategy and Finance, 2002. The current status of employment in Korea comparison of key employment indicators with OCED member countries, Ministry of Strategy and Finance Policy Report.

In the current Korean labor market, employers can unilaterally dismiss their employees not because of urgent managerial necessity but in preparation for possible future crisis. Therefore, it can be said that not only low-income and non-regular employees but also regular employees are being threatened for employment security.[78] In addition, the penal provision imposed on employers who dismiss employees unreasonably was also deleted in 2007. As in the above cases, legislation has not always moved forward in a way to protect the rights and interests of workers, but its regression was sometimes justified according to the economic principle.

With the government taking the lead to plan and implement economic growth, only after 10 years from the commencement of the economic development plan under the motto of 'Growth First, Distribution Later', there appeared opinions that the problem of distribution should not be ignored for long-term and continuous economic growth. One may justify that it was unavoidable for compressed rapid economic growth in a short period of time. Any society that pursue such quantitative expansion in such a short period of time is likely to experience adverse effects and it is true that these adverse effects appeared in South Korea as the problem of human dignity and social integration under lack of the protection of the rights and interests of labor. With the increasing gap between the rich and the poor, working women who played an important role in economic growth in the era of industrialization were discriminated in working conditions such as wages, employment, promotion and dismissal, compared to male workers, and non-regular workers were neglected in the protection of the rights and

78) Through press release in February 25th, 2013, the National Human Rights Commission of Korea (commissioner Byeong-cheol Hyun) recommended tightening the requirement urgent managerial necessity, which is the first of the requirements for justification of dismissal for managerial reason, by refining its definition as an express provision.

interests of workers. With the full-fledged flexibility of employment in the 1990s, there appeared atypical labor forms such as contract workers and labor service workers. As a result, in the 2000s, the issue of non-regular positions became a social problem beyond a personal problem. Since the exchange crisis in 1997, labor polarization has been intensified between the regular employees who have continuously improved their wage and working conditions through their strong labor union and the non-regular employees who have suffered from wages below the minimum cost of living and constant employment instability. At the same time, it is no exaggeration to say that non-regular position is not a stepping-stone needed to reach regular position any more but it has formed the working poor as another axis of labor.

Female workers and non-regular workers are in common that they are both discriminated from the other workers. However, they also have differences.[79] Female workers have gained a significantly raised status in the labor market compared to the past since protective legislation has been continuously ratified along with economic development. This is possibly related to the introduction of work-family balance scheme to the Act on Equal Employment for Both Sexes, which seems to have shifted its focus closer to work-family balance rather than gender equality in employment. However, it seems not desirable to regulate both equal employment and work-family balance through a single law since they have different purposes. Although the work-family balance scheme originated from the material instinct protection prescribed in the Act on Equal Employment for

79) It is noted that employers avoid employing women since they regard them to be a burden due to childbirth and childrearing, while they prefer non-regular workers to regular ones since they can reduce labor costs and avoid regulations.

Both Sexes, such as maternity leave, strictly speaking, gender equality in employment and maternal instinct protection also have different purposes. Therefore, it seems reasonable to separate equal employment from maternal instinct protection and work-family balance and codify separate laws.

In the meantime, despite the fact the social status of women has been raised with the increase in the economically active female population, there appears polarization within female workers with the split between regular (professional) female workers and non-regular female workers. Especially with the increasing proportion of women among non-regular workers, the increase in non-regular female workers is emerging as another social problem.

It is obvious that legal protection, be it equal employment law or non-regular workers law, may cause adverse effects against workers. However good its purpose is, the law will be meaningless unless it can protect its targets appropriately. In this sense, it can be said that law should accord with justice but at the same time suit the reality and be effective.

For emerging countries or countries in transition, it is the most desirable, from the long-term perspective, that when they establish and implement government-led economic development plan, they consider the problem of growth and distribution from the beginning although it would reduce the speed or scale of economic growth or development at that moment. Given the fact that economic growth and legislation interoperate with each other, exchanging influence, it is also necessary to introduce law on the basis of balanced valuation not inclined to either growth or distribution.

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