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Risk and Responsibility: Understanding the Distribution of Serious Accident Punishment Act*

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Abstract

Purpose: This paper investigates how companies respond to government regulations and disasters in a risk-managed society, and aims to initiate discussions on the future prospects and challenges. Specifically, it explores how companies can plan to respond to such disasters in the future, and stresses that the law should be to protect people's lives and ensure safety, rather than to punish companies. **Research design, data and methodology:** The study methodology is based on a review of existing literature, as well as trend analysis through big data analysis. The research analyzes the discourse in our society regarding the enactment of the Serious Accident Punishment Act. **Results:** This study supports that the Serious Accident Punishment Act should be implemented in a manner that does not impede corporate activities, but rather helps to ensure the safety of citizens' daily lives. The authors call for collaboration between communities, labor unions, and companies in achieving a cooperative governance system for a safer society. **Conclusions:** It highlights the importance of addressing disasters and government regulations in the context of a risk-managed society, and offers insights for both companies and policymakers on how to navigate these challenges. By prioritizing safety and cooperation, we can work towards building a safer and more resilient society

Keywords : Serious Accident Punishment Act, Risk-managed Society, Government Regulations, Company, Collaboration, Resilient Society

JEL Classification Code: D81, G18, I18, K20, L88

1. Introduction : Enterprises in Crisis

The outbreak of COVID-19 has brought attention to the threat of infectious diseases and disasters in our everyday lives. Meanwhile, in the corporate world, the Serious Accident Punishment Act (SAPA) has posed significant challenges for companies in terms of managing and responding to unforeseen accidents and disasters. The implementation of the Serious Accident Punishment Act (SAPA) has implications and challenges that need to be addressed. SAPA holds business owners and managerial

personnel responsible for major workplace accidents caused by their failure to implement occupational safety and health measures. SAPA aims to prevent serious accidents by imposing criminal liability on those responsible for such incidents. However, the effectiveness of this Act is yet to be seen, especially in the face of the ongoing pandemic, which has created new and unprecedented risks. The challenges in implementing the Act in the current context include ensuring compliance, accountability, and effective risk communication. These issues need to be addressed to ensure that SAPA contributes to a safer working environment and a more resilient society in the face of future risks .

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1.1. The Spread of COVID-19 and Uncertainty for Businesses

The COVID-19 pandemic has caused unprecedented devastation worldwide. We always live with disasters nearby. An unprecedented disaster that has completely changed life patterns around the world is currently in progress. On March 16, 2022, the number of COVID-19 confirmed patients in Korea exceeded 600,000 per day, an unprecedented figure. In just one year, the number of newly confirmed patients increased from thousands to hundreds of thousands, realizing the power of the pandemic (Figure 1). Now, the figure of tens of thousands is not surprising any more. According to the Johns Hopkins CSSE, COVID-19 has confirmed more than 600 million cases and killed 6 million people worldwide. It should be noted that even countries with advanced technology and sanitation facilities have been unable to prevent the spread of the virus in a risk society (Figure 2). Similarly, we point out that despite efforts to

create strong legal and institutional safeguards to prevent industrial accidents, incidents and accidents continue to occur at construction sites, following the implementation of the Serious Accident Punishment Act in January 2021. The prevalence of disasters highlights the need for continued efforts to mitigate their impact and prevent future occurrences.

Accidents at industrial workplaces are constantly making headlines. In an effort to prevent tragic events like the humidifier disinfectant disaster and the Sewol ferry disaster from happening again and leaving a lasting impact on society, our community has been working to establish robust legal and institutional protections. The culmination of these efforts came with the enactment of the Serious Accident Punishment Act in January 2021, which was enforced starting January 27, 2022. However, despite these measures, incidents and accidents at industrial sites have continued to occur one after another, with construction sites struggling to adhere to the law (Giddens, 1999).



Figure 1: Trend of COVID-19 Confirmed Patients (revised from source: <https://ncov.kdca.go.kr/>)



Figure 2: COVID-19 Google Trend in recent two years (revised from source: <https://trends.google.com/>)

1.2. Serious Issue on Serious Accident Punishment Act

The Gwangju Metropolitan City has faced repeated

tragedies due to building collapses in June 2021 and January 2022. Last year, seven passengers on a passing bus were killed when the outer wall of a building being demolished at the Hakdong redevelopment site collapsed. This year, the

collapse of some floors of the Hwajeong I-Park, where Hyundai Industrial Development was building, resulted in the death of six workers who disappeared under the debris. Even after the I-Park collapse, deaths occurred at Hyundai Heavy Industries in Mokpo and Ulsan, respectively, and three workers died at a quarry in Yangju, Gyeonggi-do. It is unfortunate that Hyundai Industrial Development avoided legal consequences due to the timing of the disaster, which occurred just before the implementation of the Serious Accident Punishment Act. Although the implementation of the Serious Accident Punishment Act has brought some relief, expectations and concerns still persist at industrial sites. In particular, the viewpoints of workers and users of industrial sites overlap with expectations and concerns, revealing that there are still many challenges to be addressed collectively towards a safer society(Hwang, 2022).

Even prior to the implementation of the Serious Accident Punishment Act (SAPA), there was a tense standoff between employers and workers due to differing perspectives. After the law was put into effect, both parties continued to express dissatisfaction and concerns about its enforcement. The labor sector criticizes the current system, as it is difficult to hold the CEO of the main contractor accountable for accidents. Hyundai Industrial Development Chairman visited the site of the Gwangju Hakdong Redevelopment collapse in June 2021, apologizing and pledging to prevent similar incidents in the future, yet the company was still released from legal responsibility following a major disaster just seven months later. The law states that users of subcontractors who actually secure construction orders are responsible for safety accidents, but it is challenging to hold users of the original contractor accountable.

Meanwhile, users of subcontractors are highly cautious of the new law, which significantly intensifies punishment for companies in the event of an industrial accident, potentially leading to economic recessions, such as job losses. The management community's general opinion is that punitive damages and CEO imprisonment could directly result in corporate activity contraction. Although everyone agrees on the primary goal of preventing industrial accidents and establishing effective safety management systems at industrial sites, the impact on the industry and civil society will depend on the future execution of the law and precedents set. Therefore, civil society, workers, and the business community are closely monitoring the law's future operation.

2. Comparison between Occupational Safety and Health Act (OSHA) and the Serious Accidents Punishment Act (SAPA)

Among OECD member countries, Korea's high rate of industrial accidents leading to fatalities is a pressing social issue. Despite efforts to prevent such incidents, they continue to occur with alarming frequency (Figure 3).

To address this concern, the Serious Accidents Punishment Act was enacted, with the primary objective of ensuring the safety and welfare of all individuals within a workplace environment. Under this law, the burden of responsibility falls on management, and individuals who fail to fulfill their duties may be subject to punishment. The law applies to workplaces with more than five employees and has been in effect since January 2022.

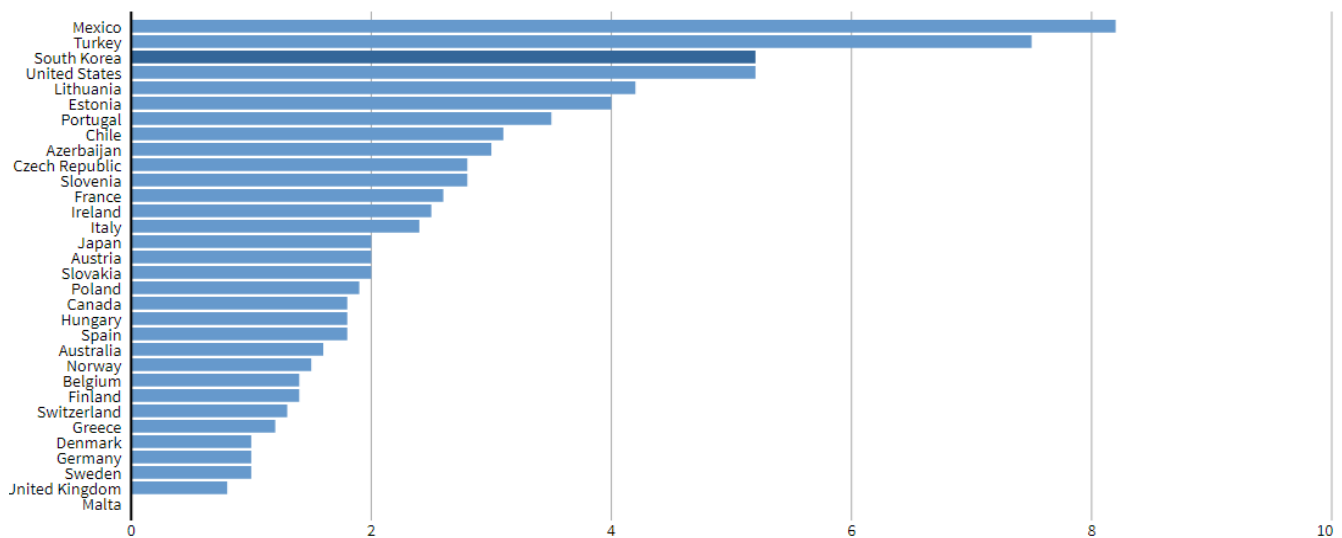


Figure 3: OECD Workplace Fatality Rate (Source: Reuters Graphics, <https://fingfx.thomsonreuters.com/>)

A major industrial accident, as defined by the Act, refers to an incident in which one or more people lose their lives. It also includes cases in which two or more workers require medical care for a period exceeding six months as a result of a single accident.

In summary, the high incidence of industrial accidents resulting in fatalities in Korea is a significant social concern among OECD member countries. To address this issue, the Serious Accidents Punishment Act was enacted, with the aim of promoting workplace safety and welfare. The law places responsibility on management and imposes punishment on those who fail to fulfill their obligations. The law applies to larger workplaces, and major industrial accidents are defined as incidents resulting in death or long-term medical care for multiple workers. The Occupational Safety and Health Act and the Serious Accidents Punishment Act are both laws related to safety and accident prevention in domestic industrial sites. However, the two laws cover different aspects and scopes of the subject matter (Table 1).

Table 1: Comparison between two laws (Source: Own)

	SAPA	OSHA
Type of law	Criminal law	Regulatory law
Purpose	Hold individuals accountable for serious accidents	Promote safety and health in the workplace
Enforcement agency	Police and prosecutors	Ministry of Employment and Labor
Liability	Criminal	Civil
Scope	Applies to serious accidents	Applies to all aspects of safety and health in the workplace
Penalties	Imprisonment and fines	Fines and corrective orders
Effective date	January 27, 2022	June 16, 1981

The Occupational Safety and Health Act is a law that regulates safety and health requirements related to the installation, operation, and maintenance of workplaces in order to protect the safety and health of workers in industrial sites. It also emphasizes the responsibility and obligation of employers for preventing industrial accidents, and regulates the establishment and functions of the Industrial Safety and Health Committee. This law is responsible for ensuring safety and health in industrial sites and protecting the lives and health of workers.

On the other hand, the Serious Accidents Punishment Act is a law that regulates the punishment for large-scale accidents that occur in industrial sites. If there are casualties or environmental damage due to large-scale accidents that occur in industrial sites, the responsible employers or managers will be punished. This law emphasizes the obligation and responsibility of companies for safety management to prevent large-scale accidents and aims to maximize the preventive effect through strict punishment in case of large-scale accidents (Table 2).

Therefore, the Occupational Safety and Health Act is a law that protects the safety and health of workers and regulates the system for preventing accidents that may occur in workplaces. On the other hand, the Serious Accidents Punishment Act is a law that imposes strict punishment in case of large-scale accidents to maximize the preventive effect. Although both laws are related to safety and health in industrial sites, it can be seen that they cover different contents and scopes in each law.

Table 2: Fatal Accident Rate (FAR) by the number of Workers employed in the Company (Source: Ministry of Employment and Labor, 2021)

Unit: persons, %, /1000	total	below 5		5~49		50~299		above 300		
		Fatal Accident Rate	ratio	Fatal Accident Rate	ratio	Fatal Accident Rate	ratio	Fatal Accident Rate	ratio	
2020	882	0.46	312 35.4	1.04	402 45.6	0.49	131 14.9	0.29	37 4.2	0.12
2019	855	0.46	301 35.2	1.00	359 42.0	0.44	147 17.2	0.33	48 5.6	0.15

3. Enterprises Responding to SAPA in Risk Society

The Serious Accident Punishment Act (SAPA) is a law passed by the Korean National Assembly aimed at holding business owners and management personnel responsible for serious workplace accidents caused by their failure to implement adequate occupational safety and health measures. The law imposes criminal liability on individuals and entities responsible for serious accidents, and business

owners may face punitive damages of up to five times the actual damages in case of willful misconduct or gross negligence. The enactment of SAPA has significant implications for corporate management in Korea. First, the law imposes greater accountability on business owners and managers to ensure the safety and health of their workers. This means that companies need to invest more resources in developing and implementing effective safety measures to prevent serious accidents in the workplace. Failure to do so can result in severe penalties, including imprisonment and

finer.

Second, SAPA has the potential to enhance the overall culture of safety in Korean workplaces by incentivizing companies to prioritize safety measures. Companies that prioritize the safety of their workers can avoid the serious legal and financial consequences of non-compliance with the law. This, in turn, can lead to improved worker morale, increased productivity, and reduced costs associated with workplace accidents.

In summary, the enactment of SAPA is expected to have a significant impact on corporate management in Korea by increasing accountability for workplace safety and incentivizing companies to prioritize safety measures. The law is aimed at preventing serious accidents and enhancing the overall culture of safety in Korean workplaces. In South Korea, the Serious Accidents Punishment Act was enacted in 2020 to strengthen the punishment of those responsible for major disasters that cause significant social harm and damage to public health and safety. The act covers various types of disasters, including natural disasters, industrial accidents, and infectious diseases.

The enactment of this law has resulted in changes in corporate management behavior. Companies are now required to prioritize the safety of their employees and the public in their business operations and take measures to prevent major disasters. Furthermore, companies that cause major disasters can face severe penalties, including fines of up to 10 billion won and imprisonment of up to 20 years. As a result, companies have become more aware of the importance of risk management and have started implementing measures to prevent major disasters.

The enactment of the Serious Accidents Punishment Act has also led to some implications. The law provides a legal basis for holding individuals and companies accountable for major disasters, which can help improve transparency and accountability in corporate management. It also emphasizes the importance of preventing major disasters and promoting public safety, which can help enhance social welfare and contribute to sustainable development. The enactment of the Serious Accidents Punishment Act has brought about significant changes in corporate management behavior in South Korea, with companies prioritizing risk management and safety measures. The law also has implications for improving transparency and accountability in corporate management and promoting public safety and welfare.

4. Different Opinions on SAPA Implementation: Hopes and Concerns for a Safer Society

The Corporate Manslaughter and Corporate Homicide Act (CMCHA) of 2007 in the UK holds companies legally accountable for any death or injury resulting from

negligence or mismanagement. Prior to this law, companies were often acquitted of such charges as there was no recognition of intent. CMCHA extends the scope of corporate responsibility to include non-legal entities, and even allows for the criminal prosecution of corporate directors. The law was enacted seven years after its need was first recognized, and similar legislation applicable to online platforms is currently in the works. Recently, it has been suggested that CMCHA could even apply to a hospital where 50 or more deaths occurred due to insufficient medical equipment. SAPA aims to prevent serious disasters and protect people's lives and bodies by imposing punishment on individuals and corporations who violate safety measures. Although the law was enacted in January 2021, it faced several challenges before the enforcement ordinance was passed in October, leading to mixed expectations and concerns about its implementation.

The opposing sides will summarize their positions on the possibility of punishing the head company's CEO and the potential contraction of industrial activities. As law enforcement agencies and the judiciary continue to make judgments and interpretations, the effects and scope of SAPA are expected to become clearer over time. This chapter attempts to examine the discourse on safety and the future tasks of SAPA from various perspectives towards building a safer society.

Initially, the law allows for flexibility in dealing with significant civil disasters, which are defined as incidents resulting in one or more deaths due to faulty materials, products, public facilities, or transportation methods. Although severe industrial accidents fall under the category of serious accidents outlined in the Occupational Safety and Health Act, there is concern that the application of the law may vary depending on the scope of public facilities for serious civil accidents. To address this issue, the Ministry of Land, Infrastructure and Transport

released a SAPA guidebook that explains public facilities and transportation during significant civil disasters. However, accidents resulting from safety management and prevention measures defects in construction sites, such as accidents in school building redevelopment or demolition work, may not be covered by the regulations. Therefore, it may be more appropriate to flexibly define the scope of significant civil disasters, which have a broad range of applications and high levels of uncertainty, rather than definitively specify the scope. A committee can review these definitions under clear principles. Under the Construction Technology Promotion Act, if three or more people die or over ten people are injured in a significant construction accident, the Construction Accident Investigation Committee is formed and operated. Likewise, it is necessary to establish a serious civil disaster accident investigation committee that includes private sector experts and public

officials. Together, they can collectively determine whether an event is a serious disaster and promote rational operation through joint decision-making (CERIK, 2020).

The second issue is the limited legal application of workplace safety regulations. The law only applies to workplaces with more than 50 full-time workers, and businesses with fewer than 5 full-time workers are exempt. The majority of industrial accident deaths in 2020, over 80%, occurred in workplaces with less than 50 employees, while only 4.2% occurred in workplaces with over 300 employees. This presents a contradiction as the law does not apply to the businesses where deaths occur more frequently (Table 2). Table 1 shows that Fatal Accident Rate (FAR) by the number of Workers employed in the Company. FAR means the ratio of deaths per 10,000 workers. Construction industry accidents accounted for 458 deaths, which is significantly higher than the 201 deaths in the manufacturing industry. Therefore, severe disaster prevention and safety measures are urgently required for small businesses with fewer than 5 employees who are not subject to legal application and those with less than 50 employees, who have a grace period until 2024 to comply. Since small businesses are excluded from the law due to their size or contraction, the state should make decisions on manpower, budget, and facility support for small businesses to ensure public safety (CERIK, 2020).

Third, it should be noted that the purpose of the law is not to punish, but to protect people's lives and secure safety. There is a positive effect that strong punishment regulations induce safety-related laws not to be violated and, as a result, companies carry out disaster prevention activities, but there

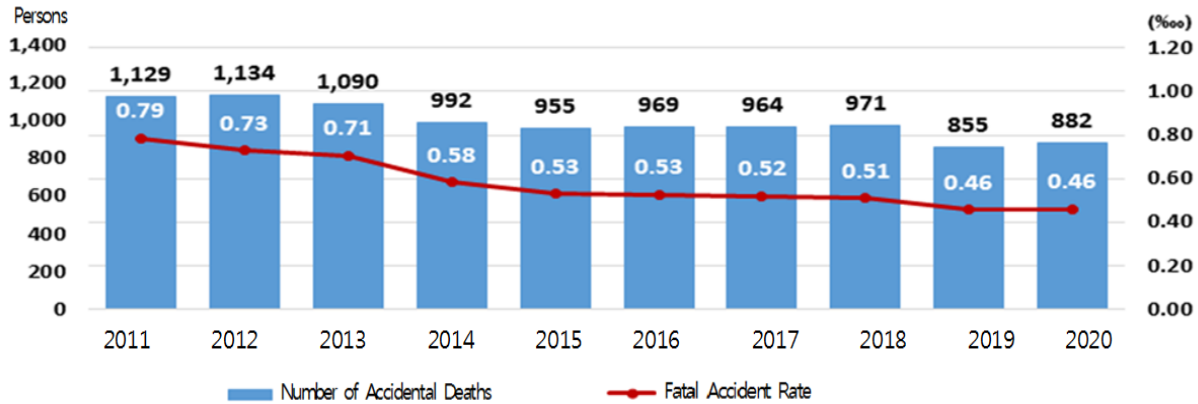
is also a negative prediction that it will not lead to practical effects as it is recognized as a formal safety prevention procedure in industrial sites. It is an important time for safety reinforcement measures to be established at industrial sites and practical efforts to create a safety construction atmosphere. It is necessary to secure sufficient time for safe construction so that site workers are not driven into poor safety management in the process of excessively shortening the construction period. It is pointed out that excessive shortening of the construction period was the main cause of the Hwajeong I-Park collapse accident. At the same time, a discussion on responsibility for safety management costs is necessary. This is because cost reduction pressure at construction sites always tends to lead to cost minimization for safety management. It is not an expedient to reduce the number of personnel and the amount of reinforcing bars, but the atmosphere of safety construction should be established naturally by securing sufficient safety management costs during the bidding process (Gobert, 2008).

Fourth, social consensus is needed on how to understand the effect of SAPA implementation. Since the enactment of the UK's Corporate Manslaughter and Corporate Homicide Act in 2007, the rate of decrease in the annual average accident death rate of 100,000 people has continued to decrease. However, there is still room for debate as to whether this is an effect of a trend that has lasted for 20 years or an effect of the enactment of the law (Roper, 2018; Samuels, 2007). In the case of Korea, it can be seen that the accident death rate has continuously decreased over the past 10 years (Figure 4, Figure 5).



Source: Construction & Economics Research Institute of Korea, 2020

Figure 4: UK CMCHA enactment and Change in Death Rate



Source: Ministry of Employment and Labor, 2021

Figure 5: Accidents and Fatalities in the last 10 years

It should be noted that the implementation of SAPA is only our first step from a risk society to a safety society, not the final destination. It seems necessary to have a social discussion on whether the reduction in death rate is due to legislation or a natural trend due to the improvement of safety awareness in our society. Although the application of the law has a positive function of resolving social problems, it should be observed that various adverse functions may occur accordingly. Raising the level of punishment to the highest level will not make all safety accidents disappear. Even though efforts to have the optimal safety and health management system to protect the life and body of the people at the workplace are faithfully implemented, there may be cases where punishment is imposed due to unavoidable accidents on the site. It is not reasonable for the purpose of the law to measure the effect of SAPA enforcement by increasing the number of people punished and the amount of fines. Rather, it is hoped that securing a safe working environment for workers in the workplace and the management's consideration and change in attitude to sufficiently guarantee this will become the standard (Beck, 1992).

5. Conclusion: A safe society where science & technology, management and risk coexist

Despite the desire of everyone to live in a safe place without accidents, news about unwanted accidents is constantly reported in the media, which often causes people to become more interested in safety. Maslow's hierarchy of needs highlights the significance of safety as a basic need that precedes self-realization and human

respect. Unfortunately, meeting safety needs remains a challenge even in industrialized modern societies due to the risks inherent in the contemporary risk society. Despite the significant progress in science and technology, accidents and disasters remain unpredictable and diverse, threatening the safety of modern city life. The enactment of the Safety and Health at Work Act (SAPA) reflects society's strong desire for safety (Maslow, 1959).

Although science and technological innovation has led to significant productivity improvements and economic growth, it has also resulted in worker accidents. Human disasters and risks are diversifying despite the remarkable advancements in science and technology, which underscores the need to assess the threats posed by the science and technology civilization formed during the industrial revolution. Industrial civilization based on scientific rationality has overlooked the risks inherent in reproducing itself. Perrow's normal accidents theory highlights the inevitability of accidents in modern society due to technological complexity and expertise, even in an advanced industrial society (Perrow, 1999).

While SAPA cannot guarantee a safe society, appropriate court precedents can complement the existing legal system to ensure its proper functioning. Punishing companies for serious disasters can raise awareness about the enormous damages that could result from such incidents. To achieve a safe society, various opinions and conflicts surrounding the enactment of the law need to converge into one voice for safety. SAPA should go beyond the punishment-oriented disaster management system and function as a comprehensive safety management system that does not rely on tricks. The cooperation of civil society, labor, and management is necessary for successful governance towards a safe society.

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