

범죄피해자 정보보호법제의 개선방안에 대한 연구

Measures for Enhancing System of Crime Victim's Information Protection

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요약

정보화시대에 있어 개인정보보호는 매우 중대한 의미를 갖는다. 그 중에도 범죄피해자정보는 가해자에게 누설될 경우 보복범죄로 신변안전이 위협되거나 불특정다수에게 누설될 경우에는 정서 및 심리적인 측면에서 2차 피해가 발생한다는 점에서 보호의 필요성이 더욱 크다. 피해자정보 보호규정은 형사소송법, 특정범죄신고자 보호법과 성범죄피해자 보호를 위한 각 법률 등에 산재하고 있다. 기존의 연구는 개별법의 정보보호에 국한하여 그 내용이 논의되었기에 통합적으로 보호법제의 문제점을 분석하고 개선방안을 제시하는 연구가 요청된다. 이 필요성에서 출발한 본 연구는 광범위한 정보열람주체, 기재생략 및 신원관리카드 활성화 규정의 미흡, 위법정보공개에 대한 부적절한 처벌수준 등을 우리 법제상의 문제점으로 분석하였다. 이후 개선방안 도출의 시사점을 얻기 위하여 해외선진법제의 규정을 간략히 검토하였고 이와 같은 과정을 거쳐 개선방안을 법규정의 측면과 실무 측면으로 나누어 도출하고 제시하였다.

■ 중심어 : | 범죄피해자 | 피해자정보보호 | 신원관리카드 | 사건기록열람 |

Abstract

Protection of personal information has significant meaning in current information age. Information of crime victim is one of top in value in that divulgence of the information to perpetrators may threat safety of the victim or cause psychological damage as 2nd harm if disclosed to public. Legal system protects the information with scattered statutes including Criminal Procedure Act. Existing studies have been limited to discussion of the single statute without integrated approach. Bearing necessity of the approach in mind, as issues of protection system this research proffers too broad subject of eligible inspection of case document, inactive practice of identity management cards and omission of personal information, and inappropriate punishment on the disclosure or divulgence. After reviewing systems of foreign jurisdictions to get useful implications, this paper suggests several measures with two separate aspect of legal provisions and protection practice.

■ keyword : | Crime Victim | Protection of Victim's Information | Identity Management Card | Inspection of Case Document |

* 이 논문은 2016학년도 백석대학교 대학연구비에 의하여 수행된 것임

접수일자 : 2016년 07월 19일

심사완료일 : 2016년 09월 02일

수정일자 : 2016년 09월 02일

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I. Introduction

Regardless of ages, information has influenced individuals' lives in a society. Moreover, the influence has been more intensive in modern IT society, since it has established revolutionary enlargement in terms of quantity of information and allowed the individuals with epoch-making technology to access to huge information ecological system. Nobody can deny that enough production of useful information and enhancement of accessibility to the information confers convenience and quality of individuals.

The information, however, is not an absolute good in current IT society. Truth has been manipulated and falsity spreaded as like truth in the form of reliable information. Moreover, high-end technology such as internet and SNS(Social Network Service) makes it possible for a person with malice to spend very little time and labor in the wrongdoing. The wounds on the victim by spreading false information or releasing truth without his consent are as deep and broad as short time spent on the disseminating and range where it was spreaded out.

Agonizing such concerns, Korean legal system has focused on protection of victim's information in order to secure victims' physical safety since it has been revealed that disclosure of crime victim information heightens risk of re-harm on victims, or retaliation from the perpetrator. Traditional perception of such necessity for protection of the information, however, confronts tremendous demand resulted from ongoing development of information technology. Easy and broad usage of new tools such as internet or SNS improves possibility to reveal victims' personal information or distorts fact of the case in unfettered manners. The result of such delinquency may produce secondary and deep harm on crime victims.

In this sense, protection of victim information has

given significant meaning to current society more than importance of the protection for physical safety of victims. Korean criminal justice system, which recognizes such necessity, also provides several policies for the protection. For example, criminal procedure act stipulates some provisions for such purpose including non-disclosure of a victim's statement and restriction on defendant's inspection or copy of case document.

While recently many researches on the protection of victim information have been actively conducted, current issues are limited to measures for protection given in single statute like criminal procedure act. In addition, they merely deal with harmony between defendant's procedural rights and measures protecting victim information. However, there should be integrated approach for the protection because legal system has enacted scattered individual statutes protecting victim information according to types of victim. The Act on protection of specific crime informants (hereinafter, Act on PSI) recommends investigative authorities to omit personal information and administrate identity management cards (hereinafter, IM cards). Statutes regulating sexual offences provide provisions prohibiting from disclosing or divulging victim's information and privacy such as Act on special cases concerning the punishment of sexual crimes (hereinafter, Act on SPS), Act on the Protection of Children and Juveniles against Sexual Abuse(hereinafter, Act on PCJ), and Sexual Violence Prevention and Victims Protection Act (hereinafter, Act on SVP).

Overcoming such limitation and paying attention to the necessity, in chapter II this research takes first step by review of individual act regulating protection of victim information enumerated above. Analysis of the issues found in previous examination will be given in another chapter. Taking the issues into

consideration, following chapter will explore foreign system of protecting victim information. Finally this paper will provide measures to enhance our legal system of victim information protection through applying implications from the exploration of developed protection system in selected countries.

II. Current legislation for protection of crime victim information

2.1 Criminal Procedure Act

2.1.1 Non-disclosure of victim's statements

According to Criminal Procedure Act, victims can request to take their information in confidence during the trial process. In practice, the information such as name, address, appearance, and secrets of privacy may be to disclose to the public in court during the hearing procedure. When courts examine a victim as a witness, it may decide to proceed the examination behind closed doors, if it is deemed necessary for the victim's privacy and personal safety, upon a request from a victim (his/her legal representative), or a prosecutor. The Criminal procedure Act, however, has certain limitations to the statements because hearing in camera may have a risk of collision with a defendant's right to take a public trial guaranteed under the Constitution. For the purpose, courts shall inform the reasons when decides a private hearing examination, and may permit a person to be present in the court even when it makes such decision if the person's presence is deemed appropriate.

The purpose of a private statement is not limited to the protection of victim's privacy and personal information through information protection. First, it is possible to prevent the emotional damage when the person testifies in confrontation with a criminal defendant. It is also possible to prevent the

psychological damage caused by disclosure of personal information to the public. Another purpose other than preventing such secondary damages of victims is to enhance the credibility of the victim's statements by providing his/her psychological stability through a private statement[1].

2.1.2 Restraints on the inspection or copying of related documents to case

Since the structure of Korean criminal proceedings consists of inquisitorial and the adversarial system, courts could not only step into the proceedings and inquire directly to a party for discovery of a truth but also provide the procedural fairness between the accused and the government for substantial truth.

According to this characteristic, Criminal Procedure Act stipulates that every single defendant shall have a right to inspect or make a copy of evidential material case and protocol of trial. Since the term of "defendant" includes a legal representative, a special agent, an assistant, or the spouse, a lineal relative, or a sibling of a criminal defendant in certain case, they may inspect or make a copy of related documents for the case. Because of such broad scope of eligible inspector, concerns are persistently issued that it may be a threat to protection of victims information and thus their safety when the documents contain victim information[2].

Unlike the provisions on defendant's rights for his/her case pending in a court, any person may file an application for inspection or copying of litigation records if the proceedings has been finalized. He/she may file it to the prosecutors' office for the purpose of remedies for his/her rights, academic research, or public interest. In this case, a prosecutor may place a restriction on inspection or copying of records of trial completely or partially, if the case involved falls under any of the following: if the trial was not open to the

public; if the disclosure of the records of trial is likely to seriously defame a party involved in the case, harm such party's privacy or security of life or body of such party, or infringe on the peace in such party's life; if the relevant person involved in the litigation does not consent to the disclosure of the records of trial.

The inspection and copying of final written judgment is also limited in any of the cases where the trial was not open to the public or where any ground exists. The court is the subject for protection of information in final written judgments and the Criminal Procedure Act imposes a duty of protecting personal information on court public officials therefor. According to the prohibition, personal information should be disclosed. For example, officials and others may use a fictitious name in the final written judgments registered in the electronic data processing system to protect the information[3].

2.2 The Act on protection of specific crime informants

2.2.1 Omission of personal information and prohibition against disclosing

When any retaliation is likely to be taken against an informant(including a victim) or his/her relatives and so on, prosecutors or judicial police officers are not required to note all or part of information which verifies the identity of the informant of the crime, such as a name, age, address or occupation in written records or any other documents. When omission of personal information is not taken, informants or their legal representatives may request prosecutors or police officers to take measures. In such cases, prosecutors or judicial public officers shall comply with such requests, unless any extenuating circumstance exists. Informants also are not required

to note all or part of their personal information in preparing written statements under approval from police officers. When real name is not filled out, informants shall sign with their fictitious names, and in this case the signatures of fictitious names shall have the same effect as those of real names. Personal information not mentioned in written records shall be registered in the IM cards of informants.

In addition, the Act prohibits disclosing personal information to ensure the efficiency of protecting omitted personal information. Any person who inform, disclose, or report personal information of informants or information with which anyone may identify informants shall be punished by imprisonment for not more than three years or by a fine not exceeding five million won[4].

2.2.2 Information protection in the process of summons and interrogation of witnesses

The Act on PSI provides several provisions to attenuate concerns of disclosure or divulgence of victim or crime informant's information during trials. When any retaliation is likely to be taken against summoned witnesses(including victims) or their relatives, the chief judge or a judge shall endeavor to ensure that the personal information of witnesses is not revealed in the processes of the examination of witnesses. All or part of personal information of the relevant witnesses may be omitted in written records, after recording the purport thereof in the protocol of trial. As examined above, Criminal Procedure Act leaves open the possibility of leakage of victim information by giving a defendant right to inspect or make a copy of any related document or evidential material for the case. Such provision on this Act is meaningful in that it lessens concern on disclosure of informant information during a defendant inspects or makes copy of evidential material and protocol of trial.

2.3 Acts on sex-offense

2.3.1 Prohibition of disclosure and divulgence in adult case

To protect victims or crime informants, the Act on SPS complies with some provisions of the Act on PSI. Article 23 of this Act complies with Article 5, and Article 7 through 13 of the Act on PSI. Therefore, protection of information measures should be taken including omission of personal information, preparation and management of IM cards, prohibition against disclosing personal information. However, in case of sexual crime, personal information should not be reported in written records regardless of the likelihood of retaliation. Unlike from the case of informants protection by law enforcement officer's omission of informant's information which has requirement of likelihood of retaliation for the omission. Even when witnesses are summoned to the court, all or part of personal information may not be required to be written regardless of the likelihood of retaliation.

This Act sets the three types and requires the penalty for each violation when victim's identity or privacy is disclosed or divulged to a third party on purpose. First, public official in charge of or participating in an investigation into or judgment on a sexual crime, or any person who had served as such public official, is prohibited against disclosing personal information or divulging privacy by which any person may ascertain the victim's identity. An offender may be punished by imprisonment for not more than two years or by a fine not exceeding five million won.

An intermediary to assist statement of sexual crime victims shall not disclose victim's personal information or divulge privacy. If the victim of a sexual crime is a child under the age of 13 or has difficulty in understanding or communication due to

any physical or mental disability, a public prosecutor or a police officer may, ex officio or upon request by the victim(including representative or counsel), allow an intermediary to assist in communication. Due to this kind of works, intermediaries are very accessible to victim information, and the disclosure of information or divulgence of privacy by them needs to be prohibited. Since intermediaries can be deemed public officials regarding works, the same penal provisions apply for intermediaries as for public officials, as previously examined.

Lastly, if a person, other than the public officials and intermediaries as reviewed above, disclosed or divulged personal information, he/she would be punished only for the dangerous cases. In other words, a person shall be punished if personal information or pictures were published in publications or broadcasted. However, he/she may not be punished if discloses or divulges to a third party not in public.

Another entity accessible to sexual crime victim information, other than public officials in charge of an investigation or intermediaries, is employees of facilities for protecting and assisting victims. The Act on SVP regulates this case. Under Section 30 through 35 of the Act, no person, who is serving or served as the head or staff member of a counseling center, a protective facility, or an integrated support center, shall divulge secrets learned while performing his/her duties. Any person who falls shall be punished by imprisonment with prison labor for not more than two years or by a fine not exceeding five million won and the legal entity or individual can also be punished by the fine prescribed.

2.3.2 Prohibition of disclosure and divulgence in children and juvenile case

The Act on PCJ strengthens protecting information of child and juvenile victims of sexual crime in

accordance with the legislative intent. This Act divides subjects who should protect information into three types; ① current or former public official who is responsible for, or involved in, investigations or trials on sex offenses against children or juveniles, ② current or former head of any institution, such as center for the protection and rehabilitation of juveniles, etc., ③ any person who does not belong to former types. This Act seems to be advanced in that it regulates the three types of protection subjects en bloc, while respective Acts regulates subjects of protecting information of adult sexual victims. However, the obligation of prohibition against disclosing personal information of children and juveniles of sexual crimes and divulgence of confidential information is equal to the level of each law on adult victims information mentioned earlier.

In other words, a public official involved in investigations or trials on sexual crimes shall not make public or divulge to any third person any personal information. A head of any related institution or a person who has served or serves as their assistants shall not divulge any confidential information he/she has become aware of in the course of performing his/her duties to any third person. Any other person shall not publish any personal information of such children and juveniles or their pictures in newspapers or other publications, or make them public through broadcasting or any information and communications network. If any person belong to three subjects reviewed earlier violates the provisions, he/she shall be punished by imprisonment with labor for not more than seven years or by a fine not exceeding 50 million won, which is more severe than the punishment imposed on in case of adult victims.

III. Issues in current legislation of victim information protection

3.1 Broad scope of subject accessible to victim information

The Act on PSI introduces a scheme to reduce the risk that registration and management of IM cards can reveal personal information of victims or crime informants. This can be evaluated as an advanced policy for information protection rather than the existing protection of victim or informant of crimes. However, it seems for efficient information protection by IM cards to be improved in several ways. First, the range of subjects who can inspect IM cards should be reconsidered. The first step of protecting victim's personal information is to set appropriate scope of subjects accessible to such information. In practice the Act on PSI allows not only prosecutors or police officers who work on the case, also prosecutors or judicial public officers of other cases, defense attorneys, and even members of council for deliberation on the payment of rescue funds to inspect IM cards. In addition, this Act allows prosecutors or police officers to designate an assistant ex officio and the assistant may provide necessary help to a victim during the investigation of the relevant criminal cases or trials. Therefore it seems necessary that the range of subjects accessible to victim information should be adjusted to the extent of minimizing the concerns about the release of information.

3.2 Inactive practice of information omission

As previously examined, criminal justice system adopted and practices omission of some victim's information. An investigation authority may omit victim's information such as name from reports and the omitted information should be registered in IM

cards. Statistics revealed, however, that cases utilizing IM cards are very rare. There were only 65 cases in 2009, 189 in 2010, 276 in 2011, and 161 cases in the first half of 2012[5].

It seems that 'Aliases record', one of measures to protect victim information, is used more than omission of reports in IM cards, but statistical results showed that nobody may assert that the usage of 'Aliases record' is galvanized. After the Supreme Prosecutors' office has established and processed 'guidelines for Aliases record and management of IM cards', cases in use of 'aliases record' have been dramatically increased merely in terms of case number. The cases were almost doubled from 848 cases (from April of 2013 to March of 2014) to 1900 cases (from April of 2014 to March of 2015), but the use of 'aliases record' is still insufficient in terms of ratio to all criminal cases. The number of violent crime in 2013 is 33,780 and 34,126 in 2014. Therefore, the ratio is respectively 2.5% and 5.6%[6]. Another statistics also reveals problem of practitioners' perception on the omission of personal information. Research on omission of personal information under the Act on PSI showed that the percentage of respondents who aware well of omission of personal information during investigations was 36.5%, and the percentage of respondents who know little or do not know at all about omission was 11.8%. It is appeared well that protection of victim's personal information is practiced unactively[7].

3.3 Inappropriate punishment on disclosure of information

The Act on SPS has been criticized in that it regulates only for the current public official involved in investigations or trials of sex crimes and thus, ignores obligations of retirees. Since this Act complements by adding the term of "any person who

has served as such public official", it is evaluated as a reasonable improvement. In other words, the Act has accomplished a systematic conformity to other related laws and set forth a foundation of protecting victim information effectively without gap by expanding penalties to the subject who is likely to release the information after retire[8].

However, the punishment for the disclosure of the victim's identity and privacy on who ex and current public official seems to be somewhat inappropriate, compared with similar penalties regulated in other laws. According to the Act on SVP, if any person who is serving or served as the head or staff member of a counseling center, a protective facility, or an integrated support center, divulged secrets learned while performing his duties, he shall be punished by imprisonment with prison labor for not more than two years or by a fine not exceeding five million won. The level of this punishment is somewhat lower than the level of punishment for occupational disclosure of other's secrets under the Criminal Act. Article 317 of the Act limits the subjects for occupational disclosure of other's secrets to a doctor, dentist, herb doctor, pharmacist, druggist, midwife, lawyer, patent attorney, certified public accountant, notary, scrivener, any person formerly engaged in such profession or a person of religious profession. It also stipulates that any person who falls shall be punished by imprisonment or imprisonment without prison labor for not more than three years, suspension of qualifications not more than ten years or a fine not exceeding seven million won. In terms of culpability, illegal act in which a public official discloses or divulges sexual crime victims' information or privacy without his/her agreement is more culpable than illegal act in which any person engaged in general professions discloses other's secrets which are obtained in the relating works.

IV. Examination of foreign protection systems

As examined above, Korean legal system raises some issues in policy of protecting victim information. In order to get some implication for enhancing Korean system of victim information protection, this chapter will explore foreign legislation and practice relating to the issues. Practice of the United States and Germany for the protection will be explored as like limitation of using personal information in criminal procedures, creating new or disguised identification of victim, and general duty of careful dealing with the information through criminal procedure. This examination will give clue for enhancing the system by revising issues revealed in current practice: broad scope of subject accessible to victim information, inactive practice of information omission, and inappropriate punishment on disclosure of information.

4.1 United States

4.1.1 Protection of information through new identification

The witness security program is key factor in the information protection of crime victims and witnesses in the United States. The program is operated by United States department of Justice and United States Marshal Service. It may be estimated as advanced system in that by creating a new identity for victims it overcame existing passive propensity in preventing divulgence of victim information. In terms of information protection, this system proffers most enhanced measures for victims in that it removes a plausibility of disclosure of victims' information by providing a new identification.

The program is provided for a victim or a witness of an organized criminal activity and other serious offense. It is performed by Federal Government or by

a state government independently. United States Federal law assigns the Attorney General as person in charge of security of witnesses concerning federal crimes. The scope of such protection is very broad, It can be provided to a witness, a potential witness, immediate family of, or a person otherwise closely associated with, and such witness or potential witness to protect the person involved from bodily injury and to assure the health, safety, and welfare of that person. The department of Justice may by regulation request to provide suitable documents to enable the person to establish a new identity and also refuse the external request to provide the identity and location of the witness. Any person who knowingly discloses any information shall be fined \$5000 or imprisoned five years, or both.

A state-government also implements various policies depending on the unique needs of each state. When a new identity is created, California Penal Code warrants protections stronger than the federal does. According to the Code, all information relating to any witness or his family participating in the Witness Relocation and Assistance Program shall remain confidential and is not subject to disclosure pursuant to the California Public Records Act. If a change of name has been approved by the program, even Code of Civil Procedure may not order to show the cause to change. Any person who discloses information of witness and victim shall be punished by a fine of up to \$2500, or imprisonment of up to six months in a county jail, or by a fine of up to \$5000, or imprisonment of up to one year in a county jail depending on the severity of violations.

4.1.2 Limitation to inspection of case document

In addition to the witness protection program which guarantees by making new identification, the jurisdiction protect information of crime victim by

controlling defendants' rights to investigate case document. While the American society has strengthened defendant's rights and the rights to inspect evidence on the stage of motion in limine for preparing effective defense, the tradition of common law has left the rights to investigate case document in exception thereof. The courts may allow inspection of information related to witness only when under their discretion they verify enough grounds as like there is no threat to witness.

Such protection is generally performed by setting limits to the inspection of personal information in trial. A criminal trial in the United States, based on adversarial system, strictly ensures the right to cross examination. Since identification of personal information about the witness is the basic procedure for the right to cross examination, a party does not have to provide a reason or purpose of the question in general when he gives a question about personal details of the witnesses. However, if it is necessary for witness protection, identification of the witness is limited. Questions about home address or work address may not be allowed if there is a risk to endanger the witness or his family. In such case, the prosecutor, who requests not to allow those questions, should prove that it is possible to endanger the witness, victim or his family because of disclosure of personal information[9].

4.2 Germany

4.2.1 Protection of victim information by disguised identification

Prior to the Second Victim's Right Reform Act, policy and practice of victim support was governed by the Integrated Act of witness protection (Zeugenschutz - Harmonisierungsgesetz, hereinafter, ZSHG) and it has been evaluated as an unified legal system of the federal level that clearly defined the

witness protection policy including witness protection program. According to Article 1 of the ZSHG, the witness and his/her family members can participate in the witness protection program with his/her consent when his/her life, body, health, liberty or essential assets is in threat. Witness protection agencies create new identification of victims and provide it to relevant institutes. The agency also can request measures to the unified service for the temporary disguised identity such as altering temporarily or creating new documents of victim's identity. If the agency requests to public officials, they should judge conflicting interests between victim and public. Namely, the public agency should issue the temporary disguised identity unless infringed public or third party interest is greater than compared victim's interests achieved by the camouflage. Even private agency can be requested to create, change, or alter personal information based on the disguised identity, if necessary, to protect victims. Upon termination of the process, the victims can participate in criminal proceedings with disguised identity and appropriate information protection measures under supervision of criminal justice system[10].

4.2.2 Limitation to use victim's information

The Second Victim's Right Reform Act has amended the present Criminal Procedure Act to strengthen conventional information protection measures for victims and witnesses. The Act allow investigative authorities or victims and witnesses to present work address or any other address where documents can be delivered rather than home address if disclosure of information of witness residence threats to the victim or his/her family and relatives. In addition, when disclosure of information of his/her identity or residence causes a risk to himself/herself or others' life, body or liberty, it is permitted not to

state the information or to state only the past information. A prosecutor has an obligation to keep documents that contain personal information and residence information. If the prosecutor has to fill out the information in trial record, he may do it only after confirming that threats to the victim or witness does not exist[11][12].

The Second Victim's Right Reform Act sets forth the general duty of care not to divulge information of witness identity even after the examination of the witness has finished. This duty was originally imposed on in the trial stage but has been expanded to investigation and arraignment stages. Moreover, when concerns of any threat such as retaliation is made, it is sufficient to fill out only name by omitting victim's residence in the indictment. In this case, victims or witnesses should be informed of the occasion[13].

V. Proposals for improving system of victim information protection

5.1 Overcoming current issues in legislation aspect

5.1.1 Systematic arrangement of disclosure level and subjects accessible to information

Korean legal system regulates protection of victim information by stipulating provisions in scattered acts. To ensure the effective protection of victims, it is necessary to install organized restriction system on accessible information contents and the right to access. For this purpose, victim's information should be categorized according to necessity of protection and measures for the protection is necessary to be devised to each type of information in a specific act. If disclosure of the information affects directly to the safety of victims, the type of information should be

classified as first priority and thoroughly managed.

In addition, when inspecting an IM cards, the measures to differentiate the level of approval based on the classifications by the relation with the safety of victims should be devised. That is, the agents accessible to inspect should be differently regulated according to the level of victim information. For instance, information of an IM cards should be classified according to necessity of protection and each information should be allowed to classified subjects for examination. Some information should be limited to the prosecutor or police official relevant to the case of victim and the defendant after stating the current reason of the inspection. The other third party, however, can inspect it only when the necessity is approved by a thorough examination and particular process such as consent of the victim. Such classifications for the level of inspection subjects and information and methods prior to allowance of examination will further comply with the purpose of victim information protection.

5.1.2 Securement of effective practice of identification management cards

For effective practice of victim information protection, there should be stratification of subjects eligible to inspect IM cards. This can be a detailed strategy of arraignment of inspection level of victim information. Preparing several grade of IM cards in which grade of information is filled out according to degree of necessity for protection would be systematic implementation of IM cards. Victims whose information is filled out in the card should be prepared by grade of necessity. For example, information of victim under protection of Act on PSI may be written in the first level of IM card, and information of other victims may be in lower level of the card such as second or third[14].

In addition, specific guideline for usage of IM cards and omission of personal information from case document should be proffered to practitioners for effective practice of the protection. As examined earlier, frequency of the usage and omission is revealed so low. Other than the discretion of investigative authorities on judgement of concern of retaliation, one of the causes for the low rate of the card is that the authorities have to do nothing but present reason for not using the IM cards. Statement of the reason is final judgement decided by the authorities and there is no extra judicial review after the fact. In other words, even if a victim request the card, the authorities may not draw up the cards under his own decision. In this sense, process of review on the nonfulfillment should be equipped with specific guideline for judgement for the concern of retaliation for the effective and vigorous application of the cards, and thus protection of victim information.

5.1.3 Effective prevention from disclosing information through appropriate punishment

In terms of punishment for unlawful disclosure and divulgence of victims' information or privacy, statutory penalty is inappropriate as examined in previous chapter and thus legal sentence for disclosure of victim information should be adjusted to reasonable degree. Especially, measure to induce individuals to be more vigilant in dealing with victim information should be considered. Current legal system does not regulate negligence in dealing with the information. While the system imposes penalty on wrongdoer who disclose or divulge victim's information and/or privacy knowingly or deliberately, disclosure or divulgence by negligence is not *actus reus*, which is essential constituent element of crime and thus not subject for criminal sanction. Punishment of negligence in management of victim

information would guarantee more careful dealing with the information on part of individuals.

Moreover, in the case that an employee in an institute of victim protection did a wrongdoing with victim information, appropriate punishment as like fine should be imposed on the institute itself which the perpetrator belongs to. Victim support institute has responsibility for supervising employees carefully since they have a broad accessibility to the information due to characteristic of the work they perform. Punishment for such culpability would make the institute to be more alert to unlawful disclosure of victim information and thus enhance protection level for victims.

5.2 Additional consideration for enhancing practice of victim information protection

5.2.1 Reasonable scope of victim for information protection

Several claims about the necessity and possibility of expanding the scope of the information protection have been suggested. Information protection in principle should, if possible, be applied to as many as victims. However, it does not seem plausible that legal system protecting victim information can embraces all victims for the information protection, and practical feasibility is expected to be significantly low due to limitation of budget and personnel. Therefore, formulation of reasonable range of victim for the protection should be pursued first, and expansion of the range also be persistently devised[15].

Under current protection system, scope of victims is at minimized degree since practically effective protection measure is limited to only when there is a concern of retaliatory crimes as regulated in the current Act on PSI. Article 2 of the Act stipulates only five categories of crime for the protection as follows: ①violent crime, ②sexual crime, ③drug

crime, ④organized crime, and ⑤terror.

According to statistic data, however, total weight of above crime happened a year is of little importance; less than 25% in 2013 and 2014[16]. Thus, victims of property-relating crime, which gives weight of more than half in all victims, is currently sidelined from protection measures guaranteed under the Act such as omission of personal information and IM cards. Even though we cannot assert that all the other victims should be protected under the Act, some categories of victim should be taken into the consideration for the protection[17].

5.2.2 Aggressive application of standard on concern about retaliation crime

As examined in previous chapters, less than a quarter of victims may be protected under the Act on PSI in terms of information. However, it is not a mandatory measure to perform the regulation on cases. In other words, the protection measure may be conferred to the victims who pass standard of “concern of retaliation.” Interpretation of the concern of retaliation is given to the discretion of law enforcement personnel. The criteria for the possibility of retaliation should be, thus, actively interpreted as a rational basis test in judicial review. In addition, guidelines should be devised to decide criteria systematically for the purpose of information protection of victims[18].

VI. Conclusion

Public has recognized negative effect of information to every single person in this information-technology age, and it has focused on necessity of controlling distortion and/or disclosure of personal information against will of the information owner. Information of

crime victims, however, should be protected under more forceful measure since they became a vulnerable social group who need care from public from the crime and there is constant possibility that they would experience secondary grave harm to body or even life besides emotional harm which general citizen may undergo on the disclosure or divulgence of personal information and privacy.

Perceiving such necessity, Korean criminal justice system has made efforts to protect victim's information. The level of the protection, however, can be estimated that it still leaves plenty room for development. While on the way of enhancing the protection system we have to bear in mind that defendant's procedural rights may not be infringed as explored before, persistent development and reformation of the protection system should be accompanied to the journey.

The first step for the journey would be establishment of basic principle that information more than necessity for sharing should not be at hand of person who does not need to inspect it by setting up grade system of victim's information and subjects accessible each grade of the information. In the process of implementing the principle, criminal justice system needs to expand the scope of victims eligible for the protection system and design a practice guaranteeing effectiveness of information protection.

This research focused on interpretation of legal provisions and examination of current policy. It does not, however, verify or estimate the degree of victims' satisfactory on current system of victim information protection. For the specific and convincing suggestions for the improvement of victim information protection, further researches are demanded which may proffer practical implications and thus measures for improvement in terms of victim's real needs and satisfaction. Enhancement of

the system reflecting results of such researches would wipe the tears and not let their eyes shed the painful tears again.

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