

The Role of Reproductive Justice Movements in Challenging South Korea's Abortion Ban

SUNHYE KIM, NA YOUNG, AND YURIM LEE

Abstract

This paper examines how issues related to abortion have historically been influenced by population control policies in South Korea and how the contemporary reproductive justice movement in South Korea has contributed to social change. On April 11, 2019, South Korea's Constitutional Court ruled that the ban on abortion was unconstitutional. As a result, South Korea's legislature must revise the 66-year-old anti-abortion law by December 31, 2020. This historic decision was closely related to the advocacy of a number of feminist groups, doctors' organizations, disability rights groups, youth activists, and religious groups in South Korea, who collectively formed the Joint Action for Reproductive Justice (Joint Action) in 2017. This paper describes the activism and actions of Joint Action as a key part of reproductive justice movements in Korea. Joint Action was initiated by an organization for women with disabilities, and once formed, they worked collectively to frame abortion as a social justice issue that goes beyond the pro-choice versus pro-life binary. By focusing on the composition, strategies, and main agenda of Joint Action, this paper analyzes how Joint Action influenced the Constitutional Court's 2019 decision to decriminalize abortion in South Korea and how the court established that it is the government's responsibility to ensure every individual's reproductive health and rights.

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Introduction

On April 11, 2019, South Korea's Constitutional Court ruled that the ban on abortion was unconstitutional. As a result, South Korea's legislature must revise its 66-year-old anti-abortion law by December 31, 2020. This historic decision was made possible in response to the advocacy of a number of feminist groups, doctors' organizations, disability rights groups, youth activists, and religious groups in South Korea, who collectively formed the Joint Action for Reproductive Justice in 2017.¹ Although the goal of Joint Action was to change the law that threatened women's health and lives through the criminalization of abortion, one of the main goals of Joint Action was to challenge the very framework of pro-choice versus pro-life. Moreover, Joint Action also emphasized that more than protecting a woman's right to freely choose whether to have or not have a baby, the government has a responsibility to promote Koreans' sexual and reproductive health and rights as a social justice matter.

South Korea has a restrictive abortion law.² Although Korean women's rights movements have previously achieved important social changes, such as revisions in family law (2005), legislation for gender equity (1999), and anti-sexual violence laws (1994), until 2010, the abortion issue was not considered an urgent item on the feminist agenda. This was because the country's 1953 law that criminalized abortion went largely unenforced from the 1960s until the mid-2000s.³ Under the strong anti-natalist policies implemented by the government from the 1960s to the 1980s, abortion, contraception, and sterilization were widely encouraged to reduce the nation's total fertility rate and, in some cases, were even used coercively among certain populations, including women with disabilities.⁴ During this period, the South Korean government established family planning clinics nationwide that provided abortion services under the name of menstrual regulation, and the government offered strong incentives such as public housing and health insurance benefits to families who had less than two children.⁵ Since abortion was widely accessible (although it was *de jure* illegal) until recently, mainstream feminist movements in South Korea

have not focused on abortion rights. However, even though abortion was accessible, there were still problems related to the actual practices of abortion, which deeply reinforced the stratified reproduction system.⁶ For example, people with disabilities, single mothers, and poor mothers were often subjected to forced abortions. Moreover, the social stigma attached to abortion was still strong. Thus, while many Korean women had abortions during their lives, it was rarely discussed in public.⁷

However, abortion finally emerged as a social agenda item after the mid-2000s, when the government began to enforce the abortion ban. Due to South Korea's criminal codes on abortion (Articles 269 and 270), many women who have wanted to terminate their pregnancies have suffered from the social stigma attached to illegal abortions as well as health risks from unsafe abortions. In this circumstance, two Constitutional Court decisions regarding the criminal codes on abortion were made in 2012 and 2019. While in 2012 the Constitutional Court decided that the existing criminal codes were constitutional, the decision was reversed in 2019, and Joint Action played a central role in this shift. In the history of the Korean women's rights movement, their efforts to legalize abortion represented the first mass movement in South Korea that foregrounded women's reproductive rights and health issues, including abortion rights. In addition, as the issue of abortion was rarely discussed among the general public in South Korea due to the strong stigma attached to unmarried women's sexual behaviors and activities, this paper will argue that the Constitutional Court's ruling that the abortion ban was unconstitutional could not have occurred without the efforts of the reproductive justice movement. Thus, it is important to examine how the reproductive justice movement made issues of sexuality and reproduction part of Korea's public and political agendas, ultimately achieving legal change in South Korea. By focusing on the composition, strategies, and main agenda of Joint Action, this paper examines the new discourses and directions for the reproductive justice movement in South Korea that were created by Joint Action.

A brief history of abortion in South Korea

Population control and abortion (1960s–2005)

Since 1953, the Criminal Act (Articles 269 and 270) has strictly prohibited abortion on any grounds. Despite this, from the 1960s to the 1980s, the major goal of South Korea's population policies was to reduce the total fertility rate so that the country could receive international aid for economic development.⁸ Under the anti-natalist policies of this era, abortion was widely practiced and recommended by the government. Many women could easily access abortion and sterilization procedures at family planning clinics. As a result, South Korea's Family Planning Program was evaluated as the most successful example of a population control project as the country's total fertility rate, which was 6.0 in the 1960s, declined to 4.5 in the 1970s, then to 2.8 in the 1980s, and then dropped further to 1.6 in the 1990s.⁹ In South Korea from 1989 to 2009, the number of abortions was estimated to range from 30 million to 50 million annually; however, during this time, an average of 5.6 abortion cases were prosecuted annually, which indicates the government's limited enforcement of the anti-abortion law.¹⁰ Yet, although the abortion restrictions were not typically enforced in South Korea during this time, women still experienced barriers to accessing abortion. For instance, women seeking abortions had to get permission from their male partners, and because it was technically illegal, they could not always access the best health care services and information related to abortion.

The criminalization of abortion (2005–2012)

South Korea's population policies shifted dramatically after the total Korean fertility rate dropped to 1.08 in 2005, which at that time was the lowest rate in the world.¹¹ In 2005, to boost this rate, the South Korean government passed the Framework Act on Low Birth Rate in an Aging Society, revived the enforcement of the criminal codes on abortion, and set up *The master plan for the prevention of illegal abortion*.¹² Furthermore, Minister of Health and Welfare Jae Hee Chun acknowledged that the government was establishing abortion prevention

policies to stimulate population growth, explaining that halving the abortion rate would significantly increase the country's total birth rate.¹³ In this changed political terrain, the Pro-Life Doctors' Association was formed in 2009, and their first political act was to report obstetrics and gynecology clinics that performed abortions to the police. The unprecedented anti-abortion campaign had a direct impact on women. During this period, women who had unwanted pregnancies often went to other countries to have abortions because they could not find doctors in South Korea who were willing to risk being prosecuted. In response to the anti-abortion campaigns in South Korea, the Network for Women's Right to Decide Pregnancy and Delivery was organized in 2010, which was comprised of feminist organizations, social justice organizations, workers' unions, and other progressive groups.¹⁴ Although the network was the first collective voice to challenge the existing criminal codes on abortion, they failed to shift the false dichotomy of pro-choice versus pro-life that dominated the Pro-Life Doctors Association's narratives. In addition, one of the controversial agenda items of the network was to expand the grounds for legal abortion listed in Article 14 of the Mother and Child Health Act to include socioeconomic reasons (Article 14 includes exceptions to the ban on abortion for cases of rape and incest, as well as for eugenic reasons).¹⁵ However, the network was unable to reach an agreement about this agenda item; by including socioeconomic reasons among the legal grounds for abortion in the Mother and Child Health Act without challenging the criminal code, opponents argued, it could reinforce existing prejudices in Korea, including that women with disabilities and poor women should not have children.

In the meantime, the first Constitutional Court review regarding the criminal law on abortion occurred in 2010, when a midwife was charged with performing an abortion and appealed to the Constitutional Court for a review of the abortion ban. In 2012, the Constitutional Court decided the ban was constitutional. The court's decision noted that "the fetus's right to life is in the public interest" while "a woman's right to choose abortion is in an

individual's interest," concluding that, thus, "women's rights cannot be more important than the fetus's rights."¹⁶ Following this decision, a teenage girl died during a complicated abortion procedure in November 2012. When the abortion procedure did not go smoothly, instead of transferring the patient to the hospital—which could have potentially saved her life—the doctor did not do so because he was afraid of being prosecuted for engaging in an illegal abortion procedure.¹⁷ As a result, the doctor was sentenced to one year in jail for engaging in the abortion procedure.¹⁸ Although this case showed how the abortion ban threatened women's lives, the government and pro-life organizations in Korea highlighted this case as showing the dangers of abortion procedures, and the network did not produce any counterarguments that gained social or political traction.

The contemporary movement to decriminalize abortion (2016–2019)

After the Constitutional Court's decision to uphold South Korea's abortion ban in 2012, the Network for Women's Rights to Decide Pregnancy and Delivery became inactive because activists involved in the network could not find ways to make significant progress in the situation. However, three years later, in 2015, the abortion issue re-emerged in feminist circles. The organization Women with Disabilities Empathy initiated the Planning Group to Make a New Paradigm for Reproductive Rights for Women with Disabilities.¹⁹ They reviewed the history of, discourses on, and contexts of the criminalization of abortion in South Korea, and they gathered stories of abortion experiences from women with disabilities. While engaging in these activities, they realized that achieving abortion rights alone could not guarantee women's reproductive rights in South Korea without first acknowledging and addressing the forced sterilizations and abortions experienced by women with disabilities.

Recognizing this, when they began organizing for the decriminalization of abortion again, the Planning Group activists realized they needed to build their coalition using a reproductive justice

framework. Reproductive justice discourses have largely grown out of the experiences of women of color in Western countries.²⁰ In particular, in the United States, reproductive justice discourses grew out of a recognition of the history of forced sterilization among Native Americans, African Americans, Puerto Rican Americans, women on welfare, and other marginalized populations.²¹ In the South Korean context, women with disabilities have historically been the main target of forced sterilization. As such, while race and ethnicity have not been central issues in reproductive rights discourses in Korea, because of Women with Disabilities Empathy's efforts, reproductive justice issues for women with disabilities became an important agenda item.

To expand their efforts to achieve reproductive health and rights in South Korea, the Planning Group to Make a New Paradigm for Reproductive Rights for Women with Disabilities was reorganized in 2016 and renamed the Sexual and Reproductive Rights Forum (the Forum), which was comprised of Women with Disabilities Empathy, Network for Global Activism (NGA), the Center for Health and Social Change, Korean Lawyers for Public Interest and Human Rights, and individual researchers.²² The Sexual and Reproductive Rights Forum became an important working group that produced new discourses and paradigms for the reproductive rights movement by revealing that the South Korean government historically had not protected the rights of pregnant women or the lives of fetuses. In addition, they held several events and published newspaper articles, opinions, and a book related to current abortion issues. Throughout these works, the Sexual and Reproductive Rights Forum argued that the 2012 challenge to Korea's anti-abortion laws had failed because the abortion issue was framed as a woman's choice versus a potential human life; they noted that if this framework was not shifted, even if they filed the case again, it would be difficult to overturn. Thus, they established a new framework for their argument: the government versus women. The main argument of the Forum was that the government historically controlled women's bodies and reproductive capacities to reduce or increase

fertility rates, thus neither supporting women's choice nor protecting human life.

Meanwhile, mass protests were triggered in September 2016 by the Korean Ministry of Health and Welfare's announcement of an amendment to the Medical Service Act that defined surgical abortion as an "unethical" medical practice and strengthened the punishment for doctors who aided in ending pregnancies.²³ These governmental efforts to further criminalize abortion and abortion providers fueled public outrage, which led to the first mass protest to demand the decriminalization of abortion in South Korea.²⁴ The first rally was held in Seoul on October 15, 2016. Two days later, the Forum held a press conference with other women's rights organizations and social justice groups.²⁵ The Forum shouted slogans during this press conference such as "the real problem is the criminalization of abortion" and "if abortion is a crime, the criminal is the state." Through their statements at the press conference, members of the Forum indicated that the government had a responsibility to rectify existing reproductive injustices and to protect everyone's sexual and reproductive rights, including the right to terminate a pregnancy or to have a child regardless of marital status, sexual orientation, ability, and socioeconomic status. Following that first mass protest, several rallies occurred around the country, many of them mobilized on social media.²⁶ In the same time period, Poland had a mass protest, called the "Black Protest," at which protestors spoke out against the anti-abortion law proposed by the Polish government. Images of the Black Protest circulated among Koreans via social media, and when the Forum and other feminist groups held their first rally after the pre-announcement of the revised regulations of the Medical Act, they named it "Black Protest Korea."

As the abolition of the criminal codes on abortion became an urgent item on the feminist agenda in South Korea, the Forum proposed a new solidarity group, the Joint Action for Reproductive Justice, for full-scale activism. When Joint Action for Reproductive Justice was launched in 2017, it was comprised of the Center for Health and Social Change, Femidangdang, Femimonsters, Flaming

Feminist Action, Korea Sexual Violence Relief Center, Korean Women's Association United, Korea Women's Hotline, Network for Glocal Activism, Sexual and Reproductive Rights Forum, Women with Disabilities Empathy, and Womenlink. On September 28, 2017, at the International Safe Abortion Day events, the Joint Action for Reproductive Justice was officially launched.²⁷ Since the hegemonic discourse around abortion in South Korea had previously focused on young, heterosexual, cisgender, able-bodied women, Joint Action wanted to invite a broad range of individuals to be part of the inaugural ceremony, and thus, many different stories related to abortion and childbirth were shared by a diverse group of women, including girls, women living with HIV/AIDS, women with disabilities, queer and transgender women, and sex workers.²⁸ Additionally, they aimed to reveal the historical contexts and intersectionality of abortion issues, and in doing so, they intended to clearly establish the decriminalization of abortion as a matter of social justice rather than just a narrow concept of reproductive freedom. This desire to expand the discourse also drew Joint Action to recruit a wide range of progressive and social justice organizations to collaborate on the issue of reproductive rights in South Korea. For example, while only the Women's Committee in the Korean Confederation of Trade Unions was involved in the Network for Women's Right to Decide Pregnancy and Delivery in 2012, the Korean Confederation of Trade Unions became a member of Joint Action in 2017 with Joint Action's emphasis on the social injustices surrounding abortion because they agreed that abortion was not separate from labor rights issues. As of July 2019, the following organizations have also joined Joint Action: the Association of Korea Doctors for Health Rights, E-LOOM Action for Anti-Prostitution and Human Rights, Green Party Korea, Korean Confederation of Trade Unions, Korean Labor Party, Korean Women's Environmental Network, People's Solidarity for Social Progress, Sarangbang Group for Human Rights, Socialist Revolutionary Workers' Party, Student March, Tacteenaeil (ECPAT Korea), and the Association of Physicians for Humanism. By bringing all major

progressive organizations in South Korea together, Joint Action tried to build a shared direction for reproductive justice in South Korea.

Soon after its launch in 2017, Joint Action became a full-fledged coalition and sought to abolish the criminal codes on abortion as the first step to achieving reproductive justice in South Korea. They had two main strategies: 1) filing a constitutional appeal to decriminalize abortion and 2) building a public consensus to support reproductive rights. In contrast to the sociopolitical environment of 2012, they believed that they could make progress at this time because public opinion was more favorable toward abortion rights. Moon Jae-in, a member of the Democratic Party of Korea, was elected president in 2017 after the impeachment of Park Geun-hye, and in September 2017, an anonymous citizen posted a national petition for decriminalizing abortion to the administration's online national petition system. The petition received more than 230,000 signatures from Korean citizens who believed that the ban on abortion should be repealed.²⁹ As only a few of the roughly 1,000 petitions posted every day ever received more than 200,000 signatures, this reflected the general public's opinion against the current criminal codes on abortion.

The attorneys who were members of Joint Action formed a defense counsel for the Constitutional Court lawsuit. Initially, the constitutional appeal was filed in 2017 by a medical doctor who was prosecuted for performing an abortion, and the case focused on the criminal code regulating abortions conducted by doctors (Article 270). The attorneys and activists of Joint Action contacted the doctor and reached an agreement to proceed with the case as a public interest lawsuit, thus shifting the central issue to the criminal code on abortion (Article 269).³⁰ The public hearing for the case was scheduled for May 24, 2018.³¹ The defense counsel wrote a 171-page pleading paper for the public hearing, and during the research and writing process, members of Joint Action played an active role by working together and sharing different groups of women's experiences to be reflected in the paper.³²

At the same time, Joint Action lobbied the parties, government ministries, and activist groups

to submit amicus briefs to the Constitutional Court. As a result, the Ministry of Gender Equality and Family, National Human Rights Commission of Korea, and Green Party Korea submitted amicus briefs stating that the government should change the current criminal codes on abortion to protect women's rights, including the right to abortion.³³ This was a big change from the 2012 Constitutional Court review because even the Ministry of Gender Equality and Family did not state any opinion publicly at that time although the Ministry of Health and Welfare announced it had no legal opinion about the Constitutional Court review. In addition, Human Rights Watch sent an amicus brief detailing how anti-abortion laws violate people's lives based on international human rights norms and standards. The UN Working Group on the issue of all forms of discrimination against women in law and in practice (WGDAW) and Global Doctors for Choice (GDC) also delivered amicus briefs to the Constitutional Court.

To bring public attention to the case and build a public consensus to abolish criminal codes on abortion, during the Constitutional Court's review of the case, Joint Action organized large rallies, an ongoing one-person demonstration in front of the court building, a signature campaign, and open forums; in addition, they participated in several TV debates.³⁴ Since public opinion about a law could indirectly influence the Constitutional Court's decision, Joint Action tried to keep public attention on the issue. As part of these efforts, Joint Action invited Rebecca Gomperts, founder and director of Women on Web, an organization that provides access to self-managed abortions through telemedicine, to speak at a forum in the National Assembly of South Korea in July 2018 while Joint Action advocated for the implementation of policies for safe medical abortion using abortion pills.³⁵ Following the event, Joint Action held a large national rally in Gwanghwamun Square in Seoul to protest the abortion ban, and approximately 5,000 protesters and 77 activist groups were present.³⁶ Soon after, on August 8, 2018, Joint Action held a press conference in front of the Argentine Embassy to support #ABORTO_LEGAL, an Argentina-based cam-

paign advocating for the legalization of abortion in Argentina. Along with these more traditional activities, Joint Action also engaged in non-traditional actions to share their message and garner national and international support to commemorate International Safe Abortion Day 2018.³⁷

In the meantime, while the government's response to abolishing the criminal law on abortion was still lukewarm, President Moon Jae-in's democratic administration was expected to respond more favorably to the issue than the conservative President Lee Myung-bak's administration had in 2012. Although the government announced they would not accept the United Nations Human Rights Council's recommendation regarding the abolition of the criminalization of abortion, the changing political environment was favorable to the abortion rights movement during the Universal Periodic Review in March 2018.³⁸ As demonstrations by Joint Action continued, the National Assembly confirmed three new Constitutional Court justice nominees in October 2018. With these new nominees, which would replace term-expired justices, the Constitutional Court met the necessary preconditions for ruling on a constitutional decision (in the South Korean legal system, a nine-justice panel is required to rule in a constitutional lawsuit). Since the new nominees were considered progressive, many people

anticipated that they would rule that the criminal codes on abortion were unconstitutional.³⁹

As the day of the court ruling approached, Joint Action held a large protest in March 2019 to publicize their demands that the government 1) fully legalize abortion for the safe termination of pregnancy, 2) expand comprehensive sex education and access to contraceptives, 3) completely revise the eugenic elements of the Mother and Child Health Act, and 4) guarantee reproductive rights without stigma or discrimination.⁴⁰ Finally, on April 11, 2019, the Constitutional Court ruled that the current abortion ban was unconstitutional. Multiple factors led to the overturning of the 2012 Constitutional Court decision, such as a changing political environment, shifts in the general public's opinion, the progressive inclinations of judges, and a decrease in religious groups' influence on abortion in Korea. Joint Action had a pivotal role in propelling some of these changes by organizing people, sharing information, and persuading politicians to work toward reproductive justice in South Korea.

The implications of the Constitutional Court's decision on South Korea's abortion ban

On April 11, 2019, South Korea's Constitutional

TABLE 1. History of abortion regulations in South Korea

Year	Laws/policies/events	Brief description
1953	Criminal Act (Chapter 27, The Crimes of Abortion)	According to Articles 269 and 270, women who have abortions and medical professionals who perform abortions can be sentenced to up to two years of prison.
1961–1996	Family Planning Program	This program aimed to reduce South Korea's total fertility rate to develop the national economy, and through this program, the government encouraged women to engage in sterilization and abortion procedures.
1973	Mother and Child Health Act (Article 14, Limited Permission for Induced Abortion Operations)	This act was enacted to support the Family Planning Program. By providing limited permission for abortion in cases of rape, incest, and eugenic diseases, it functioned to justify the Family Planning Program.
2005	Framework Act on Low Birth Rate in an Aging Society	The passage of this act marked the government's policy shift from an anti-natalist policy to a pro-natalist policy.
2005	Master Plan for the Prevention of Illegal Abortion	The Plan was established by amending the Mother and Child Health Act.
2012	Constitutional Court Decision on Articles 260 and 270	The Constitutional Court ruled that the law criminalizing abortion was constitutional.
2018	Medical Service Act	The Medical Service Act was amended to reinforce the punishment of medical doctors who performed illegal abortions.
2019	Constitutional Court Decision on Articles 260 and 270	The Constitutional Court ruled that the ban on abortion was unconstitutional and that the abortion law must be revised by December 31, 2020.

Court ruled that Articles 269 and 270 of the Criminal Act were unconstitutional.⁴¹ In the South Korean legal system, there are two types of decisions on constitutionality: “complete unconstitutionality” and “constitutional discordance.”⁴² For a law to be ruled as completely unconstitutional, a majority of justices (six of the nine justices) must determine that the law is unconstitutional. In this case, the law loses its effect immediately. However, because four of the nine justices determined that Articles 269 and 270 were in constitutional discordance, three deemed them unconstitutional, and two said they were constitutional, the articles were ruled to be in constitutional discordance. Thus, constitutional discordance means the law remains in effect until the National Assembly makes a new law within a designated timeframe (in this case, by the end of December 2020). If the National Assembly does not make a new law by then, the current criminal codes on abortion will lose their effect after December 2020. Meanwhile, although the criminal codes on abortion are technically still valid until December 31, 2020, the Supreme Prosecutors’ Office announced in June 2019 that they would suspend prosecution related to abortion cases because the Constitutional Court had clearly established women’s rights to terminate their pregnancies.⁴³

As the court decision is being used as a reference point to create new discourses and develop new policies related to abortion in South Korea, it is important to examine the implications of the court decision carefully. First, the Constitutional Court confirmed that a woman’s right to decide whether to have or not have a baby is a fundamental right guaranteed by the constitution and that it has an important effect on a woman’s health and life. The court stated that self-determination includes a woman’s right to autonomously form her own sphere of living on the basis of her dignity and, if she is pregnant, her right to decide whether she will keep her pregnancy. The justices emphasized that human beings should not be treated as a means for other values, purposes, or legal interests. These comments showed that the justices considered the historical context of Korea’s population control policies when making their decision.⁴⁴

Second, the justices noted that a woman’s decision to terminate a pregnancy does not exist in a vacuum but is deeply related to her social, economic, and family conditions. They acknowledged that, for women, childrearing may require constant physical, mental, and emotional effort for nearly two decades and that women face a diverse and wide array of social and economic situations that can affect their childrearing. These burdens and difficulties can be compounded by social problems, such as gender biases, the patriarchal culture, and poor childcare conditions. Moreover, they stated that banning abortion proved ineffective in reducing abortions and, instead, harmed women’s health and lives. As such, according to the justices, the blanket ban on abortion had not sufficiently protected the life and health of pregnant women.⁴⁵

Third, the Constitutional Court emphasized the duty of the government. The justices described the unique relationship between pregnant women and fetuses, mentioning that they are independent from and yet dependent on each other. The justices advanced the opinion that a more desirable and effective means to achieve the goal of protecting life and human rights would be for the government to faithfully implement and strengthen sex education, conduct counseling and other measures, provide social welfare assistance for pregnant women and children, and resolve various institutional and social structural difficulties that impede childbirth and childrearing.⁴⁶

As a result of these statements from the Constitutional Court, legislators were ordered to determine how to protect the lives of fetuses by substantially reducing the need for abortion while also guaranteeing women’s right to self-determination and not simply prioritizing the life of the fetus over the self-determination of the pregnant woman. One of the significant differences between the 2019 and 2012 decisions is that the justices did not frame the abortion issue as a conflict between a pregnant woman and a fetus. While the 2012 decision ruled that the value of a fetus’s life outweighs a woman’s choice to have an abortion, the 2019 court decision focused more on the responsibilities of the government to women’s reproductive rights and

lives. This court decision also reflected the pleading paper written by the defense counsel and the main arguments for reproductive justice publicized by Joint Action.

Conclusion

The main slogan in the recent reproductive justice campaign to abolish the criminal codes on abortion in South Korea was “If abortion is a crime, the state is the criminal.” The reproductive justice movement, collectively represented by the activities and actions of Joint Action, has debunked the notion that seeking abortion care makes women criminals; instead, it places responsibility on the government for upholding and advancing reproductive rights in Korea. Since 2016, the reproductive justice movement’s efforts to abolish South Korea’s criminal codes on abortion strategically focused on reproductive justice by advocating for fundamental social change that would promote actual sexual and reproductive health and rights for everyone regardless of class, gender identity, sexual orientation, and marital status. Furthermore, Joint Action was effective in persuading people that the Korean anti-abortion law was not a matter of “life versus choice” but instead a governmental and social tool that 1) allowed the state to control reproductive rights and, ultimately, to cherry-pick the lives it deemed most worthy, and 2) regulated women’s sexuality and behavior. By shifting the discourse related to reproductive issues, the movement had a stronger position in the legal fight against the state and established solidarity with other human rights organizations and groups.

The Constitutional Court’s decision on the abortion ban represents a victory for the South Korean reproductive justice movement. However, the reproductive justice movement is still working to achieve a real victory. The day after the 2019 decision, Joint Action held a press conference at which they claimed that the government and National Assembly should decriminalize abortion completely.⁴⁷ They also demanded that the government prepare a new law to guarantee everyone’s sexual and reproductive health and rights. Although the

Constitutional Court decision was progressive, the government and members of the National Assembly still remain in the paradigm of punishment and restriction regarding abortion. In April 2019, the only progressive party in National Assembly, the Justice Party, submitted amendments to the Criminal Act and the Mother and Child Health Act.⁴⁸ In those bills, they limited abortion at a woman’s request to within the first 14 weeks of pregnancy. For women between 14 and 22 weeks of pregnancy, they added that abortion would be legal on socioeconomic grounds, in addition to the existing limited exceptions listed in the Mother and Child Health Act.⁴⁹ In pregnancies more advanced than 22 weeks, they suggested that abortion is allowed only in cases of a woman’s critical health problem.⁵⁰ Since there is no country except Canada that does not have any regulations regarding abortion, Korean lawmakers tend to refer to and follow the current abortion laws in other countries, such as Germany, rather than create a new model of law. Under these circumstances, Joint Action is working on the preparation of a bill for the complete decriminalization of abortion as well as protecting actual sexual and reproductive health and rights for every individual.

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