Libel Law and the Press in South Korea: An Update
Kyu Ho Youm

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LIBEL LAW AND THE PRESS IN SOUTH KOREA:
AN UPDATE

Kyu Ho Youm, Ph.D.*

I. INTRODUCTION

Legal protection against injuries to a person's reputation is an "intersubjectively reasonable transcultural goal of the law."† In the Republic of Korea (South Korea), defamation is considered a criminal offense under the Criminal Code‡ and an "unlawful act" under the Civil Code.§ About thirty civil and criminal libel cases were reported during the 1954-80 period.¶ Eight of the libel decisions resulted from publications of the Korean press.¶

Given the small number of media libel actions in Korea up to

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Author's Note: Korean names in this article are given in the Korean name order, family name first. This rule applies especially to the names of the authors of Korean publications. On the other hand, the names of the Korean authors who have published in English are given as they are in their writings. In romanizing Korean titles of books and journal articles as well as the author names of Korean publications, the author has followed the McCune-Reischauer system as noted in "Korean," in ALA-LC Romanization Tables: Transliteration Schemes for Non-Roman Scripts, Washington, D.C.: Library of Congress, 1991, pp. 79-93.


5. Youm has stated in his 1985 study that ten libel cases involved the press "in one way or another." See, ibid. In the present study, the author has relied on Youm's study for
1980, defamation litigation involving the Korean press may have been the exception rather than the rule. As noted in a 1971 study of the libel laws of Korea and Japan: “A debate on the defenses to libel which are similar to those of Japan is conducted among jurists in Korea. However, the debate remains academic since few libel cases lead to significant court decisions.”

In recent years, however, the number of suits against the Korean news media for libel and related complaints has increased rapidly. A total of forty-eight court rulings reported between 1981 and 1991 resulted from the publication of allegedly harmful stories in the news media. Considering that suing the press has been a rarity in Korea for many years, the recent trend toward more legal actions against the media is a significant development.

On the premise that a phenomenal increase in media libel litigation in Korea during the past decade indicates a notable departure from the traditionally timid posture of the Korean public to its often overbearing press, the present study examines libel law and the press in Korea since 1981 and offers an updated analysis. The study explores three questions: (1) What is the constitutional and statutory status of reputation as a right in Korea?; (2) How have the Korean courts interpreted libel law since 1981?; and (3) What impact does the libel law have upon the Korean press?

II. REPUTATION: CONSTITUTIONAL AND STATUTORY SAFEGUARDS

Harm to an individual’s reputation is “one of the earliest injuries
recognized by virtually every legal system."10 Like the laws in most
countries,11 Korean law prohibits unjustifiable defamation. Unlike the
Anglo-American concept of reputation as an individual right,12 how-
ever, Koreans perceive their interests in their reputations "in relation
to the groups to which they belong."13 In other words, instead of
viewing a defamatory statement as a harm to the "general social rela-
tions" of an individual, Koreans consider the statement a "loss of face"
to the individual's "familial" group, as based on their Confucian
tradition.14 The Confucian concept of defamation is reflected in the
administration of the libel law of Korea.

A. Constitutional Safeguards

Like other countries,15 Korea guarantees freedom of speech and
freedom of the press in its Constitution. Article 20(1) of the Constitu-
tion provides that "[a]ll citizens shall enjoy freedom of speech and the
press, and freedoms of assembly and association."16 It explicitly pro-
hibits the Korean news media from being subject to licensing or
censorship.17

While the Constitution protects freedom of the press, it does

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10. T. Barton Carter, Marc A. Franklin and Jay B. Wright, The First Amendment and
11. For statutory recognitions of reputation as a right in various countries, see, Peter F.
Butterworth & Co., 1985; Michael J. Calvey, Laura R. Handman, Diana R. Frost and
Defense Resource Center] 50-State Survey 1987: Current Developments in Media Libel and
12. Noting that in the United States "reputation interest" is seen primarily from the
perspective of the individual, one American sociologist wrote: "Our tendency to think of
reputation in individualistic terms is rooted in our cultural emphasis on the autonomy,
independence, and achievements of individuals." Robert N. Bellah, "The Meaning of Re-
13. Young C. Kim, Japanese Journalists and Their World, Charlottesville, Va.: University
14. Paeng Won-sun, Maesu komyunkikeyson popje iron [A theory of mass communi-
15. For constitutional guarantees of freedom of speech and the press in various coun-
tries, see, Albert P. Blaustein and Gisbert H. Flanz, eds., Constitutions of the Countries of
16. Constitution of the Republic of Korea, amended in 1987, art. 21(1). For an En-
GLISH translation of the Constitution of Korea, as amended in 1987, see, Current Laws, supra
note 2, Vol. 1, pp. 3-24. See also "Republic of Korea: Supplement" in Blaustein and Flanz,
supra note 15, pp. 21-56.
17. Ibid., art. 21(2).
place limits on the freedom, in that press freedom must be balanced with other societal interests. For example, Article 20(2) states:

"Neither speech nor the press shall violate the honor or rights of other persons nor undermine public morals or social ethics. Should speech or the press violate the honor or rights of the persons, claims may be made for the damage resulting therefrom."\(^{18}\)

Further, an individual's constitutional right to protect his reputation from being injured by the press in Korea is recognized by the constitutional requirement obligating the state to assure Koreans of their "human worth and dignity" as part of their "fundamental and inviolable human rights" as individuals.\(^{19}\)

B. Statutory Safeguards

It was with the enactment of the Criminal Code in 1953 that statutory rights to an individual's reputation were first recognized. Article 307 of the Criminal Code imposes sanctions for defamation as follows:

1. A person who defames another by publicly alleging facts shall be punished by penal servitude or imprisonment for not more than two years or by a fine not exceeding 15,000 hwan;
2. A person who defames another by publicly alleging false facts shall be punished by penal servitude or imprisonment for not more than five years or suspension of civil rights for not more than ten years.\(^{20}\)

Significantly, the punishment for defamation turns upon whether the allegedly defamatory statement is false.\(^{21}\)

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\(^{18}\) Ibid., art. 20(2).

\(^{19}\) Ibid., art. 10. Article 10 states as follows: "All citizens shall be assured of human worth and dignity and have the right to pursue happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals."

\(^{20}\) Criminal Code, art. 307 (emphasis added). The amount of fines imposed under the Criminal Code has been changed by the Temporary Act on Fines, Law No. 216 (1951), revised by Law No. 2907 (1976). Article 4(1) of the Temporary Act on Fines provides:

When the provisions of fines in the Criminal Code are to be applied, such fines shall be fixed in the amount equivalent to 40 times those specified in the provisions; provided, however, that where the monetary unit hwan appears in the provisions, it shall be regarded as won.


\(^{21}\) Rather than following the once prevalent Anglo-American common law maxim, "The greater the truth, the greater the libel," see, Rodney A. Smolla, Law of Defamation, New York: Clark Boardman Co., Ltd., 1992, pp. 5-2 to 5-3, the Korean Criminal Code
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The Criminal Code expressly distinguishes between libel (written defamation) and slander (oral defamation). Slander is prohibited by Article 307. Libel is proscribed by Article 309. Article 309 states:

1. A person who, with intent to defame another, commits the crime of Section (1) of Article 307, by means of newspaper, magazine, radio, or other publication, shall be punished by penal servitude or imprisonment for not more than three years or fined not more than 25,000 hwan;
2. A person who commits the crime of Section (2) of Article 307, by the method described in the preceding section shall be punished by penal servitude for not more than seven years or suspension of civil rights for not more than ten years.22

The Criminal Code punishes libel more severely than slander on the grounds that the impact of libel is likely to be more lasting and pervasive than the impact of slander.23 Furthermore, to constitute criminal libel, publication of the statement must be made “with intent to defame.” The requirement of criminal intent protects the rights of the press, reflecting a recognition that the press should be punished only if it acts with “malice.”24 However, the criminal intent requirement applies only if the allegedly defamatory statement is truthful. If the statement is false, no showing of criminal intent is required.

Article 310 of the Criminal Code provides an affirmative defense to prosecutions under Articles 307 and 309. Article 310 stipulates that “[i]f the facts alleged under Section (1) of Article 307 are true and solely for the public interest, the act shall not be punishable.”25 Therefore, a defendant is immune from liability if the statements attributed to him are true and made in the public interest. Because the “true and solely for the public interest” defense may be used whether or not the

recognizes truth as a mitigating factor in determining liability. See, Criminal Code, art. 307(2).

22. Criminal Code, art. 309 (emphasis added).
23. As one American media attorney noted, “[d]efamatory statements made in a television or radio broadcast usually qualify as libel because, like writings, they have broader and longer exposure than the fleeting spoken word.” Neil J. Rosini, The Practical Guide to Libel Law, New York: Praeger Publishers, 1991, p. 3 (citation omitted).
24. One authority defines “malice” as “[t]he intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury or under circumstances that the law will imply an evil intent.” It adds that in libel law, malice “consists in intentionally publishing, without justifiable cause, any written or printed matter which is injurious to the character of another.” Henry Campbell Black, Black’s Law Dictionary, abridged 6th ed., St. Paul, Minn.: West Publishing Co., 1991, p. 660.
25. Criminal Code, art. 310 (emphasis added).
defamatory statement was made with intent to defame, the "intent to defame" clause is of little practical value to the press as a possible defense to defamation.

The Criminal Code also establishes a criminal cause of action for a falsehood which defames the dead.26 Article 308 provides: "A person who defames a dead person by publicly alleging false facts shall be punished by penal servitude or imprisonment for not more than two years or fined not more than 25,000 hwan."27 However, a defamatory statement about the dead that is truthful is not actionable under the Criminal Code. Prosecution for defamation of the deceased can only be initiated by complaint.28 Conversely, prosecutions for defamatory crimes under Articles 307 and 309 do not require a complainant. Only the "express objection" of the alleged defamed person can prevent the defamer from being prosecuted by the state.29

As distinguished from personal libel, "trade libel"30 is recognized as a crime in Korea. Article 313 of the Criminal Code states that "[a] person who injures the credit of another by circulating false facts or through fraudulent means, shall be punished by penal servitude for not more than five years or by a fine not exceeding twenty-five thousand hwan."31 Also, it is a criminal offense to "interfere with the business of another" by the method described in Article 313.32

In Korea, the Civil Code also protects individuals from defamation. Although the Criminal Code is largely intended to ensure the social interests in public peace and order, the Civil Code is primarily aimed at safeguarding the rights of individuals to their reputations. The Civil Code provides victims of defamation with two possible


27. Criminal Code, art. 308 (emphasis added).

28. See, ibid., art. 312(1) ("The crimes of Article 308 and the preceding Article shall be prosecuted only upon complaint").

29. Ibid., art. 312(2) ("The crimes of Articles 307 and 309 shall not be prosecuted over the express objection of the complainant").

30. "Trade libel" is defined as "[i]ntentional disparagement of quality of property, which results in pecuniary damage to plaintiff." Personal libel is distinguished from trade libel in that "the former concerns the person or reputation of plaintiff and the latter relates to his goods." See, Black's Law Dictionary, supra, note 24, p. 1038.

31. Criminal Code, art. 313.

32. Ibid., art. 314.
means of redress. First, Article 751 authorizes monetary compensation for damages resulting from the defamation thus:

1. A person who had injured another person, his liberty or reputation . . . shall make compensation for any other damages arising therefrom as well as damages in the property;
2. The court may order the compensation under the preceding section paid by periodical payments, and may order a reasonable security furnished in order to ensure the performance of such obligation.33

Second, Article 764 authorizes the court, upon the application of the injured party, to order the defamer "to take suitable measures to restore the injured party's reputation, either in lieu of or together with compensation for damages."34 Korean courts have recognized several "suitable" measures for restoring the reputation of the injured, such as retraction of the defamatory statement or publication of a notice of apology.35 Courts can also issue injunctions against persons or entities publishing the challenged libelous material when a complainant justifiably requests such relief.36

III. JUDICIAL INTERPRETATION OF LIBEL LAW

In libel litigation, the penal law has often been invoked. One scholar of Korean media law explains:

First, it has been a prevailing opinion in Korean society that a man who has injured another's reputation should be subject to penal punishment as part of retributive justice. Second, it has not been a tradition in Korea that infringement on the good name of another person ought to be compensated for in terms of monetary damages.37

Nevertheless, there is a growing trend against application of the Crim-

33. Civil Code, art. 751.
34. Ibid., art. 764.
inal Code to defamation actions since 1981. It should be noted, however, that the Criminal Code has been utilized in at least four occasions during the past ten years.

*State v. Chang Kon-sop,* a 1989 Supreme Court decision, demonstrates the application of the Criminal Code to defamation. This case stemmed from publication in a monthly magazine of a picture provided by Chang. The picture was used to falsely show airborne paratroopers who allegedly killed civilians during the Kwangjoo Uprising of 1980. The Seoul District Court, when sentencing Chang to 18 months in jail, ruled that the defendant offered the picture to the magazine "with intent to defame" those in the picture as murderers of civilians. The Seoul High Court reduced the jail sentence to 10 months. The Supreme Court affirmed the lower court's decision in toto. In applying the Criminal Code in *Chang Kon-sop,* the Supreme Court agreed with the lower courts that the defendant had aimed to injure the reputation of those in the picture.

While trade libel was at issue in two libel cases under the Criminal Code in the past two years, neither of the rulings involved a media

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38. Kyu Ho Youm observed in 1985 that "in libel litigation, the Criminal Code had been much more frequently invoked than the Civil Code at least until recent years ago." Kyu Ho Youm, "Freedom of the Press in South Korea, 1945-1983: A Sociopolitical and Legal Perspective" (Ph.D. diss., Southern Illinois University, 1985), p. 189. By contrast, between 1981 and 1991, only four of the twenty-two libel cases were ruled under the Criminal Code. Interestingly, two of the criminal libel cases involved trade libel. See, *infra,* notes 46-47 and accompanying text.


42. *Ibid.*


44. *Chang Kon-sop,* Supreme Court, p. 331.

organization as a party, though the precipitating libelous statements were published in the press. One of the cases, for example, arose when a university professor criticized Poly Ethylene Wrap, a food packing material, for containing a cancerous substance. The Seoul District Court (East Branch) ruled in *State v. Ko Yong-su* (1990) that the professor interfered with the sale of Poly Ethylene Wrap because her comment led to publication in the news media of false information on the packing material. The court noted that the publication hurt the manufacturing businesses that sell Poly Ethylene Wrap in violation of Articles 313 and 314 of the Criminal Code. The professor was sentenced to a 10-month jail term, which was suspended for two years.

In recent years, the Civil Code, as compared with the Criminal Code, has been utilized in an overwhelming number of libel cases. More than 82 percent of the media libel cases in 1981-91 have been adjudicated under the Civil Code. In applying the Civil Code, Korean courts have set forth several new libel law parameters.

*Yi Ui-hyang v. Kim Sang-kr* is a case in point. In this 1984 case, the Seoul Civil District Court enunciated a new defense for libelous stories on public matters. The court ruled that “it constitutes no unlawful act for a newspaper to publish a defamatory story for a public interest when the newspaper has a sufficient reason to believe it to be true.” The court stated that the “sufficient reason” requirement is met when the newspaper has the provable source or evidence for its belief in the truth of the article.

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48. Of the twenty media libel actions, the Civil Code was applied in eighteen cases.


50. *Ibid.*, p. 233 (emphasis added). This case originated from a story published in the *Dong-A Ilbo* newspaper, which claimed that Lee, who operated an institute for the handicapped, embezzled public funds. The news reporter prepared the story after being convinced that his story was truthful after interviewing several handicapped people staging a sit-in against Lee, after checking on the complaint filed with police against Lee, and after attempting unsuccessfully to contact Lee for his responses to the complaint. *Ibid.*, pp. 232-33.

In recognizing the news media’s reasonable belief in the truth of a libelous story as a ground for avoiding liability, the Seoul court argued that to ask the press for an extraordinary level of certainty in its belief of truth of its news reports would interfere with its proper function as an expeditious channel of information. An excessive desire to protect an individual’s right to reputation from infringement by the press, the court noted, should not chill freedom of the press, which is the “foundation of democratic politics.”

Four years later, the Supreme Court of Korea expanded the media defendant’s state of mind defense to criminal libel. The Supreme Court in Yi Il-jae v. Hakwonsa held:

Under the Criminal and the Civil Codes, when an injury to a person’s reputation relates to a matter of public concern and is only for the public interest, verification of the defamatory statement justifies the injury. Further, even when there is no proof as such, the defamation cannot constitute an unlawful act if the defamer has sufficient reasons for believing his statement to be true.

The Court, affirming the lower court’s ruling against Hakwonsa, concluded that the magazine publisher had no good reason for believing the memoir about Yi because prior to publishing the memoir, Hakwonsa made no effort whatsoever to check on the defamatory allegations. The Court further stressed that publication in a monthly magazine of the libelous article was not as time-constraining as in a daily newspaper article, and thus the defendant should have taken time to verify the memoir before publication. In Yi Il-jae, the Court has recognized a distinction between “hot news” and news with little deadline pressure. That is, while the absence of deadline pressure at the time of publication of defamatory information makes a media organization more accountable, news that requires immediate dissemination does not necessarily do so.

52. Ibid., p. 234.
54. Ibid., p. 227 (emphasis added).
55. Ibid., p. 228. The memoir at issue in Yi Il-jae was written by a person who retained Lee as an attorney. Yi was described as immoral, unethical, and dubious as a lawyer. The memoir was published in Chubu saenghwai [Housewife Life], owned by Hakwonsa. Ibid., p. 225.
56. Ibid., p. 227.
57. The Supreme Court’s reasoning in Yi Il-jae relating to the nature of news as an actionable factor is strikingly similar to the standard of liability recognized by American
When a defamatory story is based on hearsay, the defendant's assertion of "belief" in its truth does not stand to reason. In a 1989 libel case, for example, the Seoul High Court affirmed the trial court's ruling against the media defendant because the defendant published the disputed story relying on unfounded gossip about the unwed plaintiff's alleged affair with a married man.\(^{58}\)

A Seoul district court in *Yi Du-sik v. Tak Myong-hwan*\(^ {59}\) ruled that "colloquium,"\(^ {60}\) i.e., that the words were not spoken "of and concerning" the plaintiff, was not established when the plaintiff's claimed that they were emotionally distressed by an allegedly defamatory statement in a book published by the defendant. The statement claimed that the plaintiff's deceased mother had an "unusual relationship" with the Rev. Sun Myung Moon of the Unification Church when her husband was seriously ill.\(^ {61}\) The court, characterizing reputation as possessing "a high degree of individual character," reasoned that the statement did not name the plaintiff implicitly or explicitly.

On the other hand, the Seoul High Court in *Sin Hyon-sun v. Kukmin Ilbo*,\(^ {62}\) a 1991 media libel case, stated that the plaintiff's family members were entitled to damages for a libelous article about their father, though they were not directly implicated in the story. The court said that because of the children's relationship with the subject of the article, the children suffered emotional pain.\(^ {63}\) The court con-

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60. One authority on libel law explains "colloquium" as follows: "If there is no explicitly literal reference, the plaintiff must sustain the burden of pleading and proof, by way of 'colloquium,' that the defamatory statement refers to him. If the burden is not met there is no defamation and the case is dismissed." Smolla, *supra*, note 21, p. 4-35.


63. *Ibid.*, p. 169. The story complained of in the case asserted that the plaintiff was the actual assassin of Yuk Young-su, the First Lady of President Park Chung Hee, in 1974.
cluded that the defendant did not take proper care in checking on the story. Although not as extensive as Anglo-American libel law, Korean law now recognizes the "fair report privilege" as a defense for libelous publication of governmental records. A good illustration is a 1988 case, *Kwak Chol-am v. State.* The Seoul District Court ruled:

In reporting on a suspected crime of the plaintiff, the other defendants [i.e., six newspaper companies] relied on the official announcement of the Seoul Police Department. . . . They believed the defamatory false information on the plaintiff to be true and they had sufficient ground for their belief. Accordingly, we cannot find that the defendants were intentional or negligent in libeling the plaintiff.

The court, while dismissing the suits against the media organizations, held that the state must pay 10 million won ($140,000) in damages for the plaintiff's reputational injury.

For the first time in the history of Korean libel law, fair comment and criticism was accepted as a libel defense in 1990. The Seoul District Court (South Branch) in *Labor Union of Munhwa Broadcasting Corp. v. Dong-A Ilbo* held that derogatory reviews or comments are justifiable and protected via freedom of criticism, so long as they concern matters of public interest—irrespective of whether they are "objectively proper" or acceptable to a majority of people in society.

The court stated:

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65. In the United States, the common law "fair report privilege" protects the news media from libel suits from publishing "fair and accurate reports of official actions and governmental proceedings and, in most jurisdictions, reports of public, nongovernmental meetings dealing with matters of public concern." Sanford, *supra,* note 57, p. 456.


67. *Ibid.,* pp. 265-66. Each of the six newspapers respectively owned by the six defendants published a false story stating, on the basis of police information, that the plaintiff had been convicted seven times, instead of once. The plaintiff sued the Korean government and the six news media organizations for libel.

68. *Ibid.,* p. 266.


70. *Ibid.,* p. 171. The *Labor Union of Munhwa Broadcasting Corp.* case began when *Dong-A Ilbo* published a story and an editorial about the sit-in strike by the labor union of
The comment should not be an expose of an individual's private life unrelated to his public activities or an attack on his personal character. Further, the opinion about him need not be objectively correct and is lawful if it is subjectively believed to be appropriate. Even though the comment is not neutral, and is so partisan as to be one-sided, or the words and tone are violent and harsh enough to damage its subject in his social esteem, it cannot be dismissed as unfair.\textsuperscript{71}

As a general rule, a public apology has been recognized by Korean courts as a "suitable" way for the defamed to vindicate their reputation. In \textit{Kwon In-suk v. Seoul Munhwasa},\textsuperscript{72} for instance, a Seoul district court in 1991 ordered Seoul Munhwasa Co. to issue a public apology advertisement for publication of a libelous excerpt from the plaintiff's memoir regarding the widely publicized sexual abuse of her by a policeman.\textsuperscript{73} The court contended that without paying attention to the contents of the memoir as a whole, the defendant spotlighted only the isolated passages of the memoir along with "sensational" obscene pictures.\textsuperscript{74} The court also argued that the defendant was or could be aware of the defamatory impact of its publication on the plaintiff.\textsuperscript{75}

\textit{Kwon In-suk} is distinguished from other libel cases\textsuperscript{76} in that the former resulted in only a compulsory public apology in the press

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\textsuperscript{71} \textit{Ibid.} (emphasis added.)


\textsuperscript{73} \textit{Kwon In-sun} involved an unauthorized publication in \textit{Umon sensu} (Woman Sense) magazine of parts of the plaintiff's memoir entitled "Climbing Over a Wall," which described how she was sexually assaulted by a policeman while under custody in connection with her civil rights activities during the mid-1980s. The plaintiff demanded publication of an apology in the defendant's magazine in compensation for her injury to reputation. \textit{Ibid.}, p. 153.

\textsuperscript{74} \textit{Ibid.}, p. 154.

\textsuperscript{75} \textit{Ibid.}

against the media defendant while the latter involved an apology and payment of damages. *Kim Song-hi v. Dong-A Ilbo*\(^{77}\) typifies libel cases in which the plaintiff sues for both damages and an apology from the defendant. This 1990 media case started when *Yosong Dong-A*, a monthly magazine, published a story on a libel case involving the plaintiff.\(^{78}\) The story was based on interviews with the writer of another story which the plaintiff claimed to be defamatory in a previous libel case. The Seoul High Court, affirming the Seoul District Court's decision, found no reasonable ground for the asserted belief of *Yosong Dong-A* in the story giving rise to the complaint.\(^{79}\) The court stated that the magazine did little verify the story and was negligent of its obligation to interview the plaintiff.\(^{80}\) The court ordered the defendant to pay 10 million won ($140,000) in damages and publish an apology for the story.\(^{81}\)

In connection with public apology as an accepted “suitable measure” under the Civil Code,\(^{82}\) *Kim Song-hi v. Dong-A Ilbo* ended in a Constitution Court’s ruling on the Civil Code. When the plaintiff first sued for damages and an apology for the *Yosong Dong-A* story, Dong-A Ilbo asked the Seoul District Court, prior to ruling on the case, to petition the Constitution Court\(^{83}\) to review the Civil Code.\(^{84}\) Dong-A Ilbo claimed that the statutory apology requirement violated the Constitution because it infringed on both freedom of conscience\(^{85}\) and freedom of the press.

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82. For a discussion of the Civil Code on defamation, see, supra, notes 34-36 and accompanying text.

83. Under the Constitution of Korea, the Constitution Court is empowered to review a statute “upon the request of the courts” or “petitions relating to the Constitution as prescribed by law.” Constitution, art. 111(1).


85. Article 19 of the Constitution states the following: “All citizens shall enjoy freedom of conscience.” Constitution of the Republic of Korea, art. 19, supra, note 16.
The Seoul District Court rejected the argument, saying that the compulsory apology for defamation would not constitute an "unbearably humiliating psychological violation of moral judgments and freedom of conscience."\(^{86}\) The court further stated that the Civil Code provision did not contradict the constitutional limitation on freedom of the press because "freedom of the press does not include the right of the news media to publish false information."\(^{87}\)

The Constitution Court in April 1991 ruled in a 9-0 decision that the Civil Code was unconstitutional insofar as the Code requires the publication of a notice of apology.\(^{88}\) In a carefully reasoned opinion, the Court struck down the "unlawful act" provision of the Code\(^{89}\) as a violation of the Constitution on freedom of conscience and on restriction of freedoms for public welfare.

The Constitution Court emphasized that the constitutional guarantee of freedom of conscience is separate from that of freedom of religion. This separate recognition of freedom of conscience under the Constitution, the Court said, indicates unambiguously that the Constitution prevents the government from interfering with the value judgments of individuals.\(^{90}\) The Court also stated that freedom of conscience includes the right not to be forced by the government to express publicly or to remain silent on moral judgments.\(^{91}\) The Court added that "the [freedom of conscience] provision is designed to secure a more complete freedom of spiritual activities as the moral foundation of democracy, which has been indispensable to the progress and development of humankind."\(^{92}\)

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87. Ibid. In addition to Article 21(4) of the Constitution, the Seoul District Court invoked Article 37(2) in arguing that freedom of speech and the press is limited. Article 37(2) stipulates: "The freedoms and rights of citizens may be restricted by law only when necessary for national security, the maintenance of law and order or for public welfare. Even when such restriction is imposed, no essential aspect of the freedom or right shall be violated." (emphasis added.)
89. For a discussion of the "unlawful act" provision of the Civil Code, see, supra, notes 33-36 and accompanying text.
90. Ibid., p. 164.
91. Ibid.
92. Ibid. The Constitution Court noted the U.N. Universal Declaration of Human
The Constitution Court argued that a compulsory apology forces one to accept a guilt for libel against one's will. Thus, the apology is against an individual's freedom of conscience, which includes one's right of silence. The Court observed:

A notice of apology is for a person to publicize to the general public a humiliating expression of mind in his name against his will by publishing it in the mass media like newspapers, magazines, etc., in violation of his freedom of conscience. While its specific contents are determined by the state authorities as part of the judicial proceedings, the humiliating message still appears to have been a voluntary opinion of the person involved.

Thus, the Court observed, the apology requirement undermines the right of individual conscience which underlies the concepts of human dignity and value.

Second, the Constitution Court expressed strong reservations about the effectiveness of apology as a means to recover from a reputational harm. The Court viewed apologies as exceeding their utility as a necessary measure to recompense an plaintiff for that individual's lost good name. Given that an apology is forcibly imposed by the state upon the media organization which either has no desire to apologize or believes in the propriety of its publication, the apology is similar to "the return of evil for evil." The Court characterized the justice of retribution in libel law as anachronistic and primitive and, thus, incompatible with the humanitarianism to be protected in a civilized society. It said that the forced apology for libel is a punitive sanction derived from ancient law which valued the satisfaction of vendettas.

Rights of 1948, which South Korea ratified in 1990, for its guarantee of freedom of thought and conscience. The Declaration reads in relevant part: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance." For the English text of the Universal Declaration of Human Rights, see Walter Laqueur and Barry Rubin, eds., Human Rights Reader, rev. ed., New York: New American Library, 1989, pp. 197-202.

93. Ibid.
94. Ibid., pp. 164-165.
95. Ibid., p. 165.
96. Ibid.
97. Ibid.
98. Ibid. In this context, the apology sanction is punitive in the sense of penal retribution rather than compensatory under civil law. See, Yu Il-sang, Onron yunri popferon [A theory on press ethics and law], Seoul: Achim, 1991, p. 277.
Accordingly, it should be limited to criminal law. Examining the impact of apologies upon the application of the Civil Code, the Court asserted that an “apology is used as a principal means of recovery for libel while it makes damage awards a supplementary decoration of the Civil Code.” Consequently, the damage award tends to be so small, the Court said, that the apology measure proves an impediment to the constitutional requirement of just compensation for an injury to one’s reputation.

Finally, the Constitution Court addressed the question of whether or not a judicially ordered notice of apology is a compelling and necessary means to restrict the freedom of the press in the promotion of public welfare. Analyzing the issue from a comparative perspective, the Court said that apology is recognized only in Japan, where arguments against its constitutionality are “vigorously” raised. The Court, noting the libel laws of several Western countries including the United States, set forth three alternatives to public apologies under the Civil Code:

(1) Publication in newspapers, magazines, etc. of the court opinions on damages in civil libel cases at the expense of the defendant; (2) Publication in newspapers, magazines, etc. of the court opinions against the defendant in criminal libel cases; (3) A notice of retraction of defamatory stories.

The Court said that judicial impositions of these measures would not raise constitutional issues as did the compulsory apology for libel be-

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99. Ibid.
100. Ibid. See also, Paeng, supra, note 14, p. 178. The Constitution Court obviously shares Professor Lawrence Beer’s view on the public apology requirement under Japanese libel law. Beer has noted: “When apology is ordered, the [Japanese] courts may tend to refrain from awarding substantial damages which might be more likely to dissuade the media from future violations.” Beer, “Freedom of Expression in Japan,” supra, note 1, p. 315.
101. Ibid. For a discussion of the compulsory public apology for libel under the Civil Code of Japan, see, Youm, “Korea and Japan,” supra, note 8, pp. 68-70.
102. The Constitution Court discussed the libel laws of England, the United States, Germany, France, and Switzerland. The Court said that in England and the United States, damages are awarded as a rule while a voluntary apology by the defendant is recognized as a mitigating factor in reducing the damage award and that in Germany, France, and Switzerland courts order a retraction of the defendant’s statements, rule on the truth of defamation, or award damages. For a succinct discussion of libel laws in England, German, and France, see, Calvey, Handman, Frost and Drewnowski, Carter-Ruck on Libel and Slander, supra, note 11, pp. xvi-xxxii, 1xi-1xxi, 1xxi-1xxx. For a concise discussion of libel laws in the United States and Switzerland, Carter-Ruck and Walker, LDRC Survey, supra, note 11, pp. 353-58, 348-49.
cause they would not involve a forcible judgment against one’s conscience or a violation of the rights of a defendant’s character.104

IV. THE IMPACT OF LIBEL LAW UPON THE PRESS

In a study of the decisions of the Korean Press Ethics Commission from 1961-80,105 Professor Yu Jae-chon of Sogang University in Seoul concluded that media violations of citizens’ reputational rights in Korea resulted from the sensationalism of news reporting, the unprofessional practices of news reporters, and the journalists’ lack of knowledge of law and professional ethics.106 He also noted emphatically that the legal and ethical issues facing the Korean press are in part ascribable to the usual tendency of the defamed to forgo suing the media.

Obviously aware of the “do-nothing” attitude of most libel victims in Korea, one long-time observer of Korean press law argued in 1985 that the “Korean news media will remain relatively free from libel litigation though the press may be subject to severe nonlegal and political restraints more characteristic of an authoritarian government.”107 He considered three sociopolitical factors when speculating on the limited impact of libel law on the Korean press.

First, he called attention to the still pervasive influence of Confucian ethics in Korea, which “place[s] harmony and conciliation before legal battle” as a way to resolve disputes among individuals.108 Second, the traditional perception of many Koreans who view the press as “too powerful to challenge” tends to be a strong incentive against suing the news media for libel, whether actual or perceived.109 Finally, he contended that Koreans rarely expect their courts to be

104. Ibid.
109. Ibid.
institutionally competent to exercise their rule-of-law authority when deciding their claims. The Korean judiciary, which has been traditionally controlled by the executive branch, was viewed as being unduly influenced by the ruling class, including media organizations.

As indicated in the previous section, however, the explosive increase in media libel actions in Korea in recent years leaves the above commentator's observations in doubt. There are several possible explanations for the recent strong tendency for Koreans to sue media organizations. To a large extent, the unprecedented changes in the media industry as well as in the body politic of Korea since mid-1987 are directly related to the increasingly litigious zeitgeist sweeping Korea.

Yi Hye-bock, president of the Korean Journalists Club in Seoul, reported in his 1990 study that there had been an explosion in the number of claims for press arbitration since mid-1987, when the Korean government initiated several liberalizing measures to expand press freedom. In discussing the rapidly growing complaints to the press arbitration committees, Yi pointed out positive and negative

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114. Under the current Korean press statutes, enacted in 1987, press arbitration committees are authorized “to arbitrate disputes borne from claims for corrected reports and deliberate infringement cases by the contents carried in periodicals.” See, Act Relating to Registration of Periodicals (Periodicals Act), Law No. 3979 (1987), revised by Law No. 4183 (1989), art. 17(1). For an English translation of the Periodicals Act, as revised in
aspects of the changing relationship between the press and the public. Of the positive side of the issue, he said:

[O]ur citizens’ consciousness [of rights] has enormously risen. In the past, people were so intimidated by the power of the news media that they dared not assert their rights against the media although they had their rights violated by the media. At present, however, they claim their rights openly enough to confront the press.115

Yi also attributed the growing number of press arbitration cases to a declining sense of professional ethics among Korean journalists. Due to their anxiety concerning a shrinking audience as a result of the expanded media industry, Yi argued that the Korean media tend to deviate from the “right path of journalism.”116 He also maintained that the fast growing media industry, facing a lack of professionally trained journalists, hire less qualified people.117 As a result, the overall quality of journalistic work has suffered, often precipitating complaints against the press.

In the context of the press arbitration system under the Korean press statutes since 1980, the right of reply litigation has brought about libel cases on similar grounds and for different purposes.118 More often than not, plaintiffs in right of reply actions sue the media for damages for injury to their reputations under the Civil Code. For example, Yi Ui-hyang was one of those cases which involved both right of reply claims under the press statutes119 and damages for libel under

117. Ibid., p. 18.
118. The right of reply under Korean press law provides an expeditious means for individuals to recover from their press-related injury by way of a response to the news stories alleged to be libelous. On the other hand, libel litigation under the Civil Code enables the defamed to recover damages for reputational injury through an often time-consuming process. For a detailed discussion of the right of reply under Korean press law, Kyu Ho Youm, “Right of Reply Under Korean Press Law,” American Journal of Comparative Law (in press).
the Civil Code. Thus, now there is a reasonable likelihood that the Korean media can be subject to two different suits for the same news story.

Equally important is the improved status of the Korean courts as a more independent branch in the midst of an increasingly functional democracy under President Roh Tae Woo since 1988. Now Koreans have become more fully aware of a likelihood that Korean courts are no longer dictated by the "established leadership" in Korea in their judicial proceedings. In this regard, the visible assertiveness displayed by the Constitution Court epitomizes the restructuring process of rule of law in Korea. One Korean constitutional law scholar, noting an encouraging development in the status of judicial review as conducted by the Constitution Court, has said:

[T]he actual operation of the court will, by and large, rely on the political atmosphere of the day. The Constitutional [sic] Court, fortunately, has already shown its willingness to resolve many legal issues before it, by making decisions of unconstitutionality and admitting petitions against public authorities in favor of citizens. Its start seems, so far at least, to reveal a good prospect.

Korean libel law, as applied by courts in the past ten years, has impacted on both the press and the general public. On the one hand, libel jurisprudence indicates that the courts recognize the institutional function of the press as the cornerstone of democracy in Korea. Now the media can utilize the "reasonable belief in truth," the "fair report privilege," or "fair comment and criticism" protections in libel actions. These newly recognized libel defenses indicate a more liberal approach of the courts to accommodating the conflict between the press and the individual.

Media organizations, however, still often lose libel actions. Between 1981 and 1991 the courts ruled against the media in sixteen of twenty libel cases. The rate of success for libel plaintiffs was 73 percent during the period under study. There is no question that the

120. See supra, notes 49-52 and accompanying text.
121. For a thoughtful discussion of the democratic transition of South Korea in recent years, see, Donald S. MacDonald, "Korea's Transition to Democracy," a paper presented at the International Conference on "Korea's Democratic Experiment in Seoul, Korea, on June 27-28, 1991 (on file with author).
123. The rate of success for libel plaintiffs is not significantly different from that for plaintiffs in right of reply cases. One recent study has found that plaintiffs prevailed in
possibility of court action against the media is more of a reality now than in the past. As a result, the Korean press has indicated a tendency to be "more prudent" in dealing with the kind of stories that it had published more casually or routinely in the past.\(^{124}\)

Another notable development in the explosion of libel actions in Korea during the 1980s relates to the long-term impact of the rejuvenated libel law on the psyche of Koreans. The dramatic changes in the law have awakened the reluctant public to the legal mechanisms which can be employed against media organizations. This is due considerably to the wide publicity entailing media libel and related cases involving politicians and other persons of fame or notoriety. Consequently, Koreans have become conscious of their reputation as a constitutional and statutory right.

V. SUMMARY AND CONCLUSIONS

The Constitution of Korea recognizes reputation as an individual's right to be protected from unjustifiable injury by the press. Under the Constitution, the prevailing rationale for libel law is defense of the individual's rights rather than maintenance of public order as such.

Defamation is punished as a criminal offense by way of a penal servitude and/or a fine under the Criminal Code. The Civil Code provides for damage awards and suitable measures to recover from injuries to reputations. Libel and slander are distinguished in Korean law in that the former is more severely restricted than the latter. Korean libel law stipulates defenses for defamation when the published statements are truth and made in the public interest. Libel of the dead is a crime, although it can be justified when the statements are true.

Korean courts have ruled on a growing number of libel claims in recent years. The courts, however, have yet to find a clear-cut, definitional approach to balancing freedom of the Korean press with the interests of individuals in their reputations. As compared with pre-1980 libel rulings, recent case law on libel indicates that Korean judges are more sensitive to the value of a free press in an increasingly democratic Korea. For example, the news media's reasonable belief in the truth of a defamatory story is now accepted as a ground for exempting

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the publisher of such a story from liability. Also, Korean courts have established the “fair report privilege” as a defense for publication of a defamatory falsehood based on governmental documents. Opinion, as distinguished from factual statements, is now protected from libel suits if it concerns subjects of public interest.

The compulsory apology requirement under the Civil Code is no longer accepted as a means of vindicating one’s injured reputation. It is especially noteworthy that the court invalidated the apology requirement largely on the basis of the freedom of conscience provision of the Constitution.

The libel explosion in the last decade has brought about notable changes in the function of the Korean press. It has led Korean journalists to handle their potentially defamatory stories more carefully. From a legal perspective, the growing libel litigation has offered a soul-searching opportunity for Korean courts to define press freedom vis-a-vis reputation in a new sociopolitical context. Consequently, the debate on libel defenses in Korea is no longer as “academic” as it was twenty years ago. Finally, dramatic changes in the libel law have impacted on the “right-consciousness” of Koreans to such an extent that they are now more likely to assert their rights than ever before. All in all, the changes indicate that the law of libel probably will remain an area of increasing litigation in Korea.
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