Special Education Discourses on Freedom of Speech and Discriminatory Speech

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Abstract

As the name of people with disabilities reflects common people’s social consciousness about people with disabilities, it has varied with times. In particular, the name became clear by cultural and social factors or social or economic situations influenced their status. This study, therefore, discusses (1) the restriction of discriminatory speech guaranteed under the constitution, and provided in speech freedom and laws from the view of the limitation of freedom of speech and (2) suggestions about special education that dispute cases of “freedom of speech” and “discriminatory speech” give in literary works.

Keywords: Discriminatory Speech, Freedom of Speech, Personal Rights

1. Introduction

The name that calls people with disabilities represents their social status. The name of people with disabilities reflects common people’s social consciousness about people with disabilities, it has varied with times. Terms of discriminatory nuance have changed over time because they are not only terms but define their existence¹.

Specially, social prejudice emphasizes positive or negative sentiment on some groups or their members. It is a stereotyped and fixed perspective that is influenced by culture, society, economic, or political elements acquired in the process of socialization and community members’ personality. It is not easily influenced by rational demonstration or evidence². Prejudice, therefore, is mainly a special form of emotional and negative values. In other words, prejudice is that although some evaluation or judgement is sufficiently refuted that it is wrong, it is continuously insisted¹.

Institutional embodiment as social responsibility can be achieved in the form of ‘law’ to solve social discrimination problems in people with disabilities and aim at true social integration⁴. Since Americans with Disabilities Act of 1990, several Western countries including Australia(1992), Britain(1995), Hong Kong(1996), Sweden(1999), Norway(2001), and Germany(2002) enacted disability discrimination-related laws.
This study discussed that how a balance can be explored when freedom of speech guaranteed by the constitution conflicts with clauses of restricting discriminatory speech conflict provided in laws, and suggestions about special education made by dispute cases of “freedom of speech” and “discriminatory speech” in literary works. Research questions are as follows.

First, the constitution guarantees freedom of speech and the law prohibits discriminatory speech. How far is limitation of freedom of speech?

Second, what is the suggestion about special education made by dispute cases of “freedom of speech” and “discriminatory speech” in literary works?

2. Methodology

This study was analyzed as follows. First, freedom of speech and discriminatory speech was analyzed in the Constitution of Korea and disabled people-related legal terms.

Second, “freedom of speech” and “discriminatory speech” in literary works was analyzed A recall of Pinocchio by Shogakukan Inc. and a dispute between Tsutsui Yasutaka and the Japanese Epilepsy Association. Synonyms of discriminatory speech include hate speech, hostile speech, or derogatory speech but this study uses a term, discriminatory speech.

3. Findings

3.1 Limitation of Freedom of Speech in Freedom of Speech and Discriminatory Speech Stipulated in the Constitution

3.1.1 Disabled People-Related Terms in the Constitution

The Constitution of the Republic of Korea only stipulates basic expression about people with disabilities in Article 34(5) that “citizens who are incapable of earning a livelihood due to a physical disability, disease, old age or other reasons shall be protected by the State under the conditions as prescribed by Act". This provision shows extremely restrictive limitation as it limits the scope of people with disabilities to physical disability.

As stipulated in Article 11(1) of the Constitution, “all citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status”, discrimination due to sex or other reasons is prohibited. Therefore, it is natural to infer that discrimination based on disability is prohibited. However, it is necessary to enact an independent clause like several European countries. For example, according to Article 3(3) of the Basic Law for the Federal Republic of Germany amended in 1994, “no person shall be disfavored because of disability”. According to section 5 of the Constitution of Finland amended in 1995, “everyone is equal before the law. No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person”. According to Article 7(1) of Austrian Federal Constitutional Laws, “the Republic (Federation, Laender, and municipalities) commits itself to ensuring the equal treatment of disabled and non disabled persons in all spheres of every-day life. It should, therefore, be considered that the constitutions of France, Italy, and Netherlands possess a clause for people with disabilities' social security.

3.1.2 People with Disabilities-Related Terms in Laws

The existing legal terms which have social prejudice or negative nuances were collectively improved on June 30, 2014 by amending the Presidential decree. It aimed to provide an opportunity to participate in society equally as a good member for people with disabilities and create an institutional condition to realize their rights and promote social integration. As shown in Table 1 ganjil (hate speech of epilepsy in Korean), people with ganjil, and a ganjil seizure were changed into noejeonjeung (better expression of epilepsy in Korean) (4 cases), people with noejeonjeung (2 cases), and noejeonjeung seizure (2 cases), respectively. The blind and the deaf and dump were changed into people with visual impairments (1 cases) and people with hearing and speech impairments (2 cases), respectively. Disabled fellows and deformity was changed into people with disabilities (4 cases) and “provided by a decree of the
Ministry of National Defense”, respectively. As shown in Table 2, the definition of people with disabilities should be improved because it is different between “the Act on Welfare of Persons with Disabilities” from “the Employment Promotion and Vocational Rehabilitation of Disabled Persons Act”. Kim indicated that “differently label people” that call people with disabilities is inappropriate to reflect the reality of people with severe disabilities. In particular, “being different” needs reference of judgement. If it is based on the way and speed of people without disabilities, it needs terminology that avoids or reinforces an issue of well-known “normality”10.

Table 2. Definition of people with disabilities

| Law                                                                 | Definition                                                                                                                                 |
|---------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| Act on Welfare of Persons with Disabilities                         | The term “person with a disability” means a person who is hampered by substantial long-term impairment in daily life or social activity due to physical or mental disability(Article 28). |
| Employment Promotion and Vocational Rehabilitation of Disabled Persons Act (Abbreviation: Employment of Disabled Persons Act) | The term “disabled person” means a person whose long-term professional life is substantially restricted as a result of a physical or mental impairment and thereby falls within the criteria prescribed by Presidential Decree(Article 28). |
The Ministry of Education & Human Resources Development produced supplement and guidance for elementary, middle, high school textbooks for successful integration education of students with disabilities with the Korea National Institute for Special Education\textsuperscript{11}. The Ministry of Education & Human Resources Development requires special attention in guidance: (1) not to specially focus on successful people with disabilities, (2) not to regard people with disabilities as the subject of sympathy, (3) not to use terms that derogate or disgrace people with disabilities, and (4) to learn basic etiquette about people with disabilities. It, specially, takes three examples regarding terms that derogate or disgrace people with disabilities, as shown in Table 3.

### Table 3. Discriminatory terms for people with disabilities

| Discriminatory Terms | Amended Terms | Basis |
|----------------------|---------------|-------|
| Disabled fellows     | People with disabilities | Term, ‘disabled fellows’ should be replaced by ‘people with disabilities’. Using ‘fellows’ may derogate people with disabilities. |
| Normal people        | People without disabilities | It is not desirable to use ‘normal people’ for an opposite concept of ‘people with disabilities’. It can implant that ‘people with disabilities’ are abnormal. Instead, it is recommended to use ‘people without disabilities’. |
| The mentally retarded| People with intellectual disabilities | It is not desirable to use a disability term twice such as ‘he mentally retarded’. It is recommended to use people with intellectual disabilities. |

#### 3.1.3 Limitation of Freedom of Speech in the Constitution

The constitution comprehensively guarantees individual or collective “freedom of speech” through freedom of speech and the press, and freedom of assembly and association (Article 21(1) of the Constitution). Then, it confirms that speech that violates the honor or rights of other people could be limited in Article 21(4) of the Constitution (Neither speech nor the press shall violate the honor or rights of other persons nor undermine public morals or social ethics). Specially, as discrimination strength of discriminatory speech can be different, it is necessary to admit exceptions of punishment in case of discrimination with socially acceptable strength and a legitimate act. In other words, in case speech is viewed as an act that does not violate norm a usage in society in light of a social common notion, it may preclude illegality exceptionally in accordance with article 20 of the criminal law). According to the principle of clarity derived from “nullum crimen sine lege” principles, passages of legal clauses that prohibit and punish discriminatory speech should be clear. Some questions, therefore, can arise whether ‘insult’ can clearly imply prohibited and punished discriminatory speech\textsuperscript{12}.

“...The Act on the Prohibition of Discrimination of Disabled Persons, Remedy against Infringement of their Rights, etc.” inflicts punishment upon malicious discrimination (Article 49(1) of the same act). It stipulates that malice shall be determined after considering willfulness of the discriminatory act, the continuation and repetition of the discriminatory act, the retaliation against the victim of discrimination, and the substance and scope of loss suffered from discrimination.

#### 3.2 Suggestions about Special Education that a Dispute of “Freedom of Speech” and “Discriminatory Speech” given in Literary Works

A discriminatory message is conveyed in literary works in two ways. First, a sentence itself conveys a discriminatory message. Second, a discriminatory message is not conveyed but a discriminatory relationship appears. This study discussed a suggestion about special education of a dispute of “freedom of speech” and “discriminatory speech” through a recall of Pinocchio by Shogakukan Inc. (1976) in the first case and a dispute case between Tsutsui Y asutaka and the Japanese Epilepsy Association (1993) in the second case.

##### 3.2.1 A Case of Conveying a Discriminatory Message by a Sentence itself: A Recall of Pinocchio by Shogakukan Inc. (1976)

A resident in Nagoya, Japan read a colored fairy tale book to his child in November 1976. He pointed out “a lame fox” and “a blind cat” in the book. He indicated that a wise hero with healthy body was described as “an expected child image”, whereas other characters...
with disabilities were described as a loser in life. He argued that this expression extended and encouraged discrimination and could not overlook and protested to Shogakukan Inc. (筒井康隆). Shogakukan Inc. accepted his protest and admitted that “there was discriminatory speech”. They finally recalled their four of five kinds of Pinocchio fairy tale books. However, they communicated the purport that “the latest collection of world literature for boys and girls would not be recalled because it did not contain blind or lame expression” to a relator. Then, the relator did not accept their action and demanded four conditions: (1) A recall of an international version, (2) suggestion of detailed ways to recall, (3) presentation of self-criticism in writing, and (4) a check and a report of all their publication. But Shogakukan Inc. did not accept a recall of an international version and was opposed to the relator. The relator appealed to mass media and made it a social issue. He also led an enlightenment campaign that “books with discriminatory speech should be prohibited from children’s reading” for libraries and demanded to recall a total of 38 Pinocchio fairy tale books published by 11 publishers in Japan. Then, “the Library Problems Research Association” refuted his demands in December of the same year. They presented a written refutation that argued that a recall was a blockade action for the press and it was unacceptable in accordance with “freedom of a library” and that Pinocchio was about child’s possibility to overcome his weakness and grow, so it was a broad interpretation to connect “blind” and “lame” with the discrimination of people with disabilities, which meant wrong understanding. They also emphasized that a recall could not eliminate the discriminatory of people with disabilities and “change only by words” was just fantasy. They also stated that the discriminatory of people with disabilities could not be removed or a social system could not be changed by a threat to an individual company. Although there were criticisms on an unfair complaint, Shogakukan Inc. was also criticized by “an easy-going measure”. Some people ridiculed that “elimination of Pinocchio would incur derision”.

3.2.2 A Case of not Conveying a Discriminatory Message but Implying a Discriminatory Relationship in Literary Works: A Dispute Between Tsutsui Yasutaka and the Japanese Epilepsy Association

On July 8, 1993, the Japanese Epilepsy Association asked the expurgation of “Unmanned Police” written by Tsutsui Yasutaka (筒井康隆) put in “High School Japanese I” by Kadokawa Shoten Federation Co., Ltd. (角川書店) because it encouraged epilepsy discrimination. The course of this event was carried in a special story entitled “Discriminatory Speech and Taboo of the Press” in the December issue of 読売新聞 (Tsukuru), a monthly magazine, in 1993. It introduced a protest of the Japanese Epilepsy Association, a reply of Kadokawa Shoten Federation Co., Ltd., and the declaration of stop writing by Tsutsui Yasutaka. Newspapers mentioned two main disputes, “Freedom of speech and discrimination” and “Is unmanned police a discriminatory novel?” and discussed discrimination which was overlooked but existed already in this kind of dispute.

A story is as follows. Unmanned Police describes the near future. A happening begins when the hero encounters with a robot police on his way to office. The robot police has a speed tester, a drunkometer, and an electronencehalography as well as a pocket electronic brain. The speed tester tests speed violation and the drunkometer controls drunken driving.

As it is dangerous to drive by people who can cause epilepsy, it measures brain waves using the electronencehalography. Those who show abnormal brain waves are taken to a hospital before they develop a seizure. The robot police turns its head toward him, making metal sounds. The hero feels bad and thinks that ‘I have no epilepsy and did not drink. Even I have never done something wrong’.

The Japanese Epilepsy Association pointed out five problems of two expressions about “epilepsy” in their protest on July 10, 1993. First, the expression of “those who show abnormal brain waves are taken to a hospital before they develop a seizure” neglects human rights of people with epilepsy and epilepsy is treated as the object of control, not as the object of medicine or welfare. Second, the passage of “I have no epilepsy and did not drink. Even I have never done something wrong” treats epilepsy badly. Third, an idea that people with epilepsy are dangerous to drive is behind the times and disturbs the Association’s campaign of getting a driver’s license according to symptoms. Fourth, a seizure is a part of various epilepsy symptoms. While many people with epilepsy have no a brain wave problem, some general people have a brain wave problem. Fifth, the use of this textbook can implant a negative idea in students with epilepsy.

4. Discussion

Suggestions about special education of a dispute of
“freedom of speech” and “discriminatory speech” in literary works. Disability terms have varied with the treatment of people with disabilities and sensitively reflected dignity or rights of subjects according to their meaning\(^{12}\). Typical disputes of the name of people with disabilities are as follows. Yamaguchi (1996), argued that since there is no limited group which is grouped in the scope of people with disabilities, the use of term, people with disabilities is not appropriate\(^{17}\). As Minow (1990) pointed out, “dilemma of difference” by Lee(2014) that there is no a strategy to deny the concept of disability in a struggle against discrimination by the attribute of disability gives many suggestions about the name of people with disabilities\(^{18}\,^{19}\). Nevertheless, as Uchino (1995) suggested, the importance of freedom of speech should be guaranteed from a view of democracy principle that participation by members’ speech activity is essential in community decision making and from a view of meaning that speech activity occupies to realize human dignity, as well as from a view that speech activity should be guaranteed for discussion on other basic rights\(^{12}\). However, although freedom of speech means freedom within the scope of not damaging others, in reality, discriminatory speech damages the disadvantaged.

Therefore, the disadvantaged should be considered at maximum but freedom of speech is emphasized in principle. Freedom of speech is especially important in human rights and should be highly respected. It's restriction should be minimal to protect others interests. Although some contents deserve to be blamed, their control should be not permitted. A restriction of freedom of speech can be justified only if it damages others directly or concretely. It appeared only as one of the rule of harm inhibition\(^{21}\).

Although discriminatory speech can be justified on the basis of freedom of speech, it cannot be argued definitely if it violates others’ personality or discriminates others\(^{12}\). According to precedents of the Supreme Court, when freedom of speech conflicts with personal rights, it is the most important to explore a balance to maximize conflicting basic rights (precedents of the Supreme Court, April 22, 2010, No. 2008 Da38288). Freedom of speech has two sides. In other words, it has the inside and the outside. As Uchino (1995) pointed out, it is possible to contrast the surface world of the constitution and the inner world of a law or public administration\(^{21}\). Although freedom of speech is guaranteed under the constitution, actual institutions strictly limit it. Sometimes it is not possible to speak freely under social pressure. Freedom is guaranteed in the surface world of legal system. But, there is the inner world difficult to argue at ease. Considering our educational climate that difference easily return to superiority or inferiority in our society, two cases of freedom of speech and discriminatory speech in Japan have great implications for us.

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