

**The Protection of Privacy
under the COVID-19 Pandemic
- Focused on South Korean Case -**

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Section 01

Overview of Privacy Protection Law in Korea

01

Overview of Privacy Protection Law in Korea

- **Constitution Article 17: The privacy of all citizens shall not be infringed.**
 - **“the right to be alone”**
 - **Personal Information Protection Act**
 - **Basically OPT-IN way of protection**
 - **Pre-allowance is required for collection, use, and provision of personal information**
 - **Recent amendment(enforced from August 5 of 2020) took in the compatibility clause, pseudonymized personal information with reference to the EU GDPR**
 - **Balancing of Protection and Utilization of PI**
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01

Overview of Privacy Protection Law in Korea

- the Constitutional Basic Right of “Private Information self determination Right” or “Informational Autonomy”
- The Constitution Article 37
 - (1) Freedoms and rights of citizens shall not be neglected on the grounds that they are not enumerated in the Constitution.
 - (2) The freedoms and rights of citizens may be restricted by Act 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.

Section 02

Privacy Protection under Pandemic

- **Cases**
 - **Three major outbreaks of Covid-19 in Korea**
 - **Shin-Cheon-Ji Church case(Feb. 2020)**
 - **Itaewon club case(May 2020)**
 - **Gwang-hwa-moon protest case(Aug. 2020)**

Privacy Protection under Pandemic

- **Infectious Disease Control and Prevention Act**
 - **Article 34-2: Disclosure of Information during Infectious Disease Emergency**
 - **When the spread of infectious disease is harmful to the level of the issuance of a crisis alert of caution level or higher,**
 - **The Minister of Health and Welfare(MOHW) shall promptly disclose information,**
 - **such as the movement paths, transportation means, medical treatment institutions, contacts of patients of the infectious disease**
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- **Article 76-2: Request for Provision of Information and Verification of Information**
 - **If necessary to prevent infectious diseases and block the spread of infection**
 - **MOHW or the Director of the Korea Center for Disease Control can request agencies, institutions, organizations, and individuals to provide PI including sensitive information.**

Section 03

Risk Management and Privacy

03

Risk Management and Privacy

- Risk Society and Administrative Governance
- Choice under Uncertainty
- the limits of traditional tools of agency
- Proportionality Principle vs. Precautionary Principle
- Behavioral Biases and Rational Choice in Modern Administrative Law
 - Availability Heuristics
 - Cascading
 - Group Polarizations
 - Hindsight Bias

03

Risk Management and Privacy

- Protection of Privacy in Modern Risk Society
- Precautionary measures and Privacy under Pandemic situations

Section 04

Liberty and Right as Fundamental Conceptions of Public Law

04

Liberty and Right as Fundamental Conceptions

- Liberty at 'The Constitution of Liberty' by F. A. Hayek
- Anglican Liberty vs. Gallican Liberty
- Choice, Rational Choice, Liberty and Right
- Individual Choice and Public Choice

04

Liberty and Right as Fundamental Conceptions

● Thesis I

- If the rational choices of everyone are led to collective rational choice of public, and under that condition, each person's choice are in the boundary of liberty and those choices should be protected as Constitutional Right.

● Thesis II

- When each individual's choices are led to collective irrational choice of society and under that condition, the state can intervene into individual's choice with coercive power with mutual agreement.

04

Liberty and Right as Fundamental Conceptions

- Scenario I
 - Perfect competitive market for Economic Efficiency
 - Political system with perfect functioning for Political Efficiency
- Scenario II
 - Prisoner's dilemma
 - Market failure as Externality
 - the tragedy of commons

Section 05

Privacy as Liberty and Right under Pandemic

05

Privacy as Liberty and Right Under Pandemic

- Each individual's choice in Privacy situations
- Each individual's choice under pandemic
- The scope of liberty and right of privacy under pandemic

05

Privacy as Liberty and Right Under Pandemic

- public disclosure and collection by authority of PI under pandemic
- Proportionality Principle vs. Precautionary Principle
- Privacy in Risk society

Section 06

Concluding Remark and Q&A
