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Collective Bargaining in Sri Lanka – Legal Provisions and Practice

"No Why" – The Right to Reasons in Sri Lanka

"Comfort Women" – Militarism, Colonialism, and the Trafficking of Women

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Editor's note .....

This month's issue of the LST Review begins with an article on collective bargaining by ***Ms. Shyamali Ranaraja***, where she traces the history of collective bargaining in Sri Lanka and also the applicable legal provisions and practices. The article also contains some important observations on certain key elements that would help to make collective bargaining play a more meaningful role in labour relations in Sri Lanka.

Also included is an article by ***Ms.Naazima Kamardeen*** focusing on the right to reasons in Sri Lankan jurisprudence. In addition to the administrative law remedy available to a person deprived of his right to reasons ie. writ application, the article also seeks to explore the possibility of such a person resorting to a Fundamental Rights action in the Supreme Court.

The last article in this Review contains the summary of an article on the issue of 'military comfort women' who served as sexual slaves to the Japanese Imperial Army during World War II. The article provides a detailed analysis of the background to this issue as well as the reasons why trafficking of women, despite the grave human rights violations involved, remains an issue of great international concern which requires far greater remedial action.

Collective Bargaining in Sri Lanka – Legal Provisions and Practice

Shyamali Ranaraja[*]

1. Introduction

Collective bargaining is a well-established concept in labour-management interaction the world over, and its existence is accepted as an indication of a well-developed and stable system of industrial relations. Its evolution can be related to the acceptance of pluralistic and democratic principles in society, and the respect for the civil liberties of individuals and collectives of individuals.

In the international arena, many of the accepted principles of industrial relations, including collective bargaining, are embodies in internationally accepted treaties formulated within the International Labour Organisation (ILO). The International Labour Organisation was established in 1919 and precedes even the formation of the United Nations. Its primary objective is the promotion and protection of the rights of workers. In 1944, at its 26th General Conference, the Organisation adopted the Declaration of Philadelphia, a set of principles which guides it even today. The Declaration states *inter alia* that –

> *"labour is not a commodity;*
> *that freedom of expression and association are essential to sustained progress;*
> *that poverty anywhere constitutes a danger to prosperity everywhere; and*
> *that the war against want must be carried on both within each nation, and by continuous and concerted international effort."*

The International Labour Organisation has emphasised the freedom of association as the basis for its goal of achieving lasting peace through social justice. To this end, the Organisation has progressively developed and adopted Conventions and Recommendations which had advanced the pursuit towards fulfilling this right to all workers. The key international standards in this regard are –

Convention 87: Convention concerning Freedom of Association and Protection of the Right to Organise; and

Convention 98: Convention concerning the application of the Principles of The Right to Organise and to Bargain Collectively.

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There are also other Conventions, Recommendations and Resolutions adopted by the General Conference, especially in relation to the linkage of that right to civil liberties such as the freedom from arbitrary arrest, etc., which have amplified and expanded the fundamental principles contained in the two core Conventions.

Sri Lanka ratified Convention 87 in December 1992 and Convention 98 in 1995. However, many of the duties and obligations arising under those Conventions had been provided for by statute prior to such ratification, although some important provisions have only recently been adopted.

2. What is Collective Bargaining?

Article 4 of the Convention No. 98 of the International Labour Organisation on the Right to Organise and to Bargain Collectively defines collective bargaining as the "..... voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements". An underlying precondition is the right to association for both employers and employees, and it has been observed that the countries in which free and meaningful collective bargaining takes place are those which recognise and honour the freedom of association for both parties in this process of negotiation.[1] Therefore, a brief examination of the freedom of association and the right to organise is necessary in order to evaluate the role of collective bargaining in industrial relations in Sri Lanka today.

3. The Right of Association and the Right to Organise

Convention No. 87 cited above is the foundation of the right of association and was adopted by the International Labour Organisation in 1948. Article 2 states that –

> *"Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation."*

Other provisions recognise the right of an organisation of workers or employers to draw up its own constitution, to elect officials without state interference, to operate and administer the business of that organisation, and the right to federate or affiliate.

Adopted in 1949, Convention No. 98 seeks to protect workers from controls by employers and employers' organisations and also seeks to guarantee non-interference by workers' and

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[1] De Silva, S.R., and Amerasinghe, E.F.G., Collective Bargaining, Monograph No. 10, Employers' Federation of Ceylon (1988).

employers' organisations in respect of each other. Article 1 of Convention No. 98 requires that –

> *"(1) Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.*
>
> *(2) Such protection shall apply more particularly in respect of acts calculated to –*
>
> *(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;*
>
> *(b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours."*

The Convention also provides that appropriate national conditions, which include legislation and regulation, shall be established to ensure the protection stated in Article 1.

3.1 Freedom of Association and the Right to Organisation in Sri Lanka – Pre-1978 Period

The First Constitution of independent Ceylon, the Soulbury Constitution, had no specific guarantees with regard to the freedom of association. The fundamental rights of citizens were protected by Article 29 of the Constitution, which directed its attention to safeguarding the rights of religions and of communities. However, both prior to independence and since then under the various Constitutions, the superior courts had the power to issue Mandates in the nature of Writs for the purpose of protecting fundamental human rights and freedoms.

This basic principle was tested in July 1966 when the Ceylon Bank Employees Union (CBEU) called a strike protesting against promotions at National and Grindlays Bank Ltd. from the rank of Clerk to Assistant Officer, on the ground that three of its senior members had been overlooked. A Commission of Inquiry appointed to inquire into the dispute found that the three employees had been overlooked due to a requirement in the letter of appointment which stated that, to be eligible for promotion to or confirmation in the grade of Assistant Officer or an equivalent grade the employee should not be or become a member of the CBEU or any other Trade union. This provision was stated to be an unfair and improper restriction on the freedom of association, and it was recommended that such clauses be deleted from letters of appointment. This recommendation was based not on any provision of law but on general principles.

The first Constitution of the Republic of Sri Lanka enacted in 1972, introduced a guarantee of

fundamental rights and freedoms. The Constitution stated that all persons were equal before the law and entitled to equal protection of the law, and that no person shall be deprived of life, liberty or security of person except in accordance with the law. It was further provided that no citizen shall be arrested, held in custody, imprisoned or detained except in accordance with the law, and that every citizen had the right to freedom of assembly and of association, speech and expression, thereby making it possible for trade unionists to function without fear or unlawful arrest and detention. However, the absence of a mechanism to obtain redress, as of right, in the case of violations of the fundamental rights detracted from the absolute worth of these rights and guarantees.

In *Gunaratne v The People's Bank*[2], a unique petition in that it was instituted under the provisions of the Constitution of 1972, the Supreme Court held that a requirement by the employer that an employee should resign from the membership of a particular trade union before being eligible for promotion, and that he should not hold membership in such trade union so long as he held a post in a particular grade, was obnoxious to the fundamental right to the freedom of association guaranteed by the Constitution. In the course of that judgment the Supreme Court observed as follows:

> *"The right of all employees (except a few prescribed categories) to voluntarily form unions is part of the law of this land. It exists both in the Constitution and in statute form. No employer can take away this statutory right by imposing a term to the contrary in a contract of employment. But of course where the State considers a restriction of this right is necessary for good cause, it is enabled to do so by Section 18(2) of the 1972 Constitution. Such a restriction can be imposed only by law and only for grounds set out in section 18(2) and no other.*
>
> *This right of association is of great value and has varied scope. It embraces associations that are political, social, or economic and includes even such entities as clubs and societies. But trade unions enjoy pride of place. They play a significant role as an integral part of the democratic structure of government, and are part of the contemporary political and social landscapes."*

3.2 The 1978 Constitution

The present Constitution has guaranteed to every citizen the fundamental right of association and

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[2] [1986] 1 Sri L.R 338

its concomitant rights as follows:

Article 14 (1) : ***(a)*** *Freedom of speech, expression including publication,*
(b) *freedom of peaceful assembly,*
(c) *freedom of association, and*
(d) *freedom to form and join a trade union, and freedom of movement.*

This right is further strengthened by the fundamental right to the freedom from torture, inhuman and degrading treatment or punishment (Article 11), freedom from discrimination on the ground of political opinion (article 12(2)), and the freedom from arrest, custody, detention and personal liberty, the deprivation of which shall only be in accordance with established legal procedure (Article 13). However, all fundamental rights may be restricted as prescribed by law in the interests of national security, public order, protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedom of others, or meeting the just requirements of the general welfare of a democratic society.

The exclusive jurisdiction to hear and determine a question relating to the infringement or imminent infringement of a fundamental right by executive or administrative action is vested in the Supreme Court by Article 17 read with Article 126 of the Constitution of 1978.

3.3 The Scope of the Fundamental Rights Guaranteed by Article 14(1)(c) and (d)

The Courts in Sri Lanka have defined, clarified, and extended the application of these fundamental rights in various decisions handed down from time to time. In *De Alwis v Attorney General*[3], the petitioner, the Secretary of the relevant trade union, disputed his transfer on the ground that it was to discourage the trade union work of the petitioner, and alleged a violation of his fundamental right to association under Article 14(1)(d). It was submitted on behalf of the State that Article 14(1)(d) only guaranteed the freedom to form and join a trade union, and that as the petitioner did not complain that he had been prevented from joining a trade union, there was no infringement of his fundamental right. Tambiah, J., held that:

> *"Article 14(1)(d) should not be read so narrowly and literally, and if [this] narrow interpretation is accepted, the enshrined fundamental right would remain an empty right. The words "form" and "join" must refer not only to the initial commencement of the Trade Union and the initial admission to membership, but also to the continuance of the Trade Union and membership. The right . . . also carries with it the concomitant right to freely engage in lawful Trade Union activity. If a Trade Union member or official is penalised or victimised for indulging in legitimate*

[3] SC 7/1987, SCM 28.3.88

Trade Union activity, he would be entitled to complain to this court that his fundamental right under Article 14(1)(d) has been violated."

In *Wijeratne v AG*[4], where the petitioners complained that the Police had seized posters (containing demands, *inter alia*, for salary increases and permanency of employment), which had been prepared by members of a trade union for a picketing campaign, the Supreme Court held that:

> *"The planned protest was clearly not a hasty, strident, over-reaction to a trifling or transient grievance, but a patient, subdued and dignified plea to the conscience of the community for a living wage . . . [The Petitioner's] freedom of speech and expression was violated by the seizure of his posters . . . by preventing the non-violent demonstration, his freedom of peaceful assembly was infringed; and since that protest and assembly was a legitimate activity of a lawful association . . . his freedom of association was also impaired . . . ."*

In these and other instances, the courts of Sri Lanka have given a liberal interpretation to the principals governing freedom of association.

3.4 Trade Unions Ordinance

The Trade Unions Ordinance No, 12 of 1935 was in advance of the ILO Conventions, but its provisions have been amended to reflect the evolution of the right to association, and the international obligations of the State. A 'trade union' is defined as "any association or combination of workmen or employers, whether temporary or permanent, having among its objects one or more of the following:

(a) the regulation of relations between workmen and employers or between workmen and workmen or between employers and employers; or

(b) the imposing of restrictive conditions on the conduct of any trade or business; or

(c) the representation of either workmen or employers in trade disputes; or

(d) the promotion or organisation of financing of strikes or lockouts in any trade or industry or the provision of pay or other benefits for its members during a strike or lockout, and includes any federation of two or more trade unions."

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[4] S.C. Application No. 379/93, S.C.M. 2.3.94

While these provisions are applicable to all employees in the private sector and to public servants, an association of judicial officers, members of the armed forces, the police, prisons officers and members of the Agricultural Corps not considered a trade union in terms of the Ordinance. This restriction is permissible both in terms of the Conventions and the safeguards imposed by Constitutional provisions.

3.5 The Industrial Disputes Act

Although not necessarily so, the definition of collective bargaining in Convention No. 98 states that the outcome of voluntary negotiations between employer or employers' organisation and a trade union of employees is to be a collective agreement. The Industrial Disputes Act No.43 of 1950 recognises the impact of collective agreements on the settlement of industrial disputes, and attempts to promote collective bargaining through the status accorded to collective agreements resulting from that process.

A collective agreement is defined as –

> *"An agreement between an employer or employers, and any workman or any trade union, or trade unions consisting of workmen which relate to the terms and conditions of employment of any workman or to the privileges, rights or duties of any employer or employers, any workman or any trade union or unions consisting of workmen, or to the manner of settlement of any industrial dispute."*

It is clear therefore that the scope of the subject matter of a collective agreement is greater in Sri Lanka than one envisaged by Convention 98 as arising from collective bargaining. The above definition enables a collective agreement to include the manner of settlement of any industrial dispute, and does not restrict it to a negotiation only of the terms and conditions of employment.

The Industrial Disputes Act also provides for the publication of a collective agreement after scrutiny by the Commissioner of Labour and the entering into force, continuation and cessation of operation of a collective agreement. In an apparent contradiction of the principles of collective bargaining, the Act also provides for the extension of any collective agreement by the Commissioner of Labour to other employers in that industry in any district or to all employers in the country.[5] Thus the provision permits a collective agreement, which should be the outcome of voluntary negotiations between the parties concerned, to be imposed externally on any other employer who has not been represented at such discussions, and without any opportunity for him to be heard.

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[5] Section 10(6) of the Industrial Disputes Act.

The Act also acknowledges that collective bargaining may not always result in the parties reaching a settlement of the issues being negotiated or in the entering into of a collective agreement. If such negotiations prove to be unsuccessful in resolving the issues in dispute, those issues may be referred to conciliation by the Commissioner of Labour, and if the process is successful a Memorandum of Settlement may be entered into under the supervision of the Commissioner of Labour.[6] If parties are not able to arrive at a settlement of the dispute, provision has been made for the dispute to be referred to voluntary or compulsory arbitration, whereby an award that is binding upon the parties would be made after due inquiry.

Offences in relation to collective agreements have also been set out in the Act,[7] together with penalties for being convicted of the commission of such offences. However, these provisions have been infrequently invoked, detracting to some extent the status of collective agreements.

3.6 Unfair Labour Practices: Amendment to the Industrial Disputes Act

By an amendment to the Industrial Disputes Act, No. 56 of 1999, several new concepts were introduced, especially in keeping with the obligations accrued by the ratification of Convention No 98. The amendment provides that any employer found guilty of any of the following acts or omissions would be guilty of engaging in an Unfair Labour Practice:[8]

(a) Require a workman to join or refrain from joining any trade union or to withdraw or refrain from withdrawing his membership of a trade union as a condition of his employment.

(b) Dismiss a workman by reason only of his membership of trade union or of his engaging in trade union activities.

(c) Give any inducement or promise of a workman for the purpose of preventing him from becoming or continuing to be a member, office bearer or representative of a trade union.

(d) Prevent a workman from

(i) forming a trade union, or
(ii) supporting a trade union by financial or other means.

(e) Interfere with the conduct of the activities of a trade union.

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[6] Section 12, *op.cit.*
[7] Section 40(1)(a)-(ff)
[8] Section 32A(a)-(g)

(f) Dismiss or otherwise take disciplinary action against any workman or office bearer of a trade union –

(i) for any statement made by such workman or office bearer in good faith before any tribunal or person in authority; or

(ii) for any statement regarding acts of omissions of the employer relating to the terms and conditions of employment of the members of such trade union made by such workman or office bearer, in pursuance of an industrial dispute for the purpose of securing redress or amelioration of working conditions of such members.

(g) Refuse to bargain with a trade union that has in its membership not less than forty percentum (40%) of the workmen on whose behalf such trade union seeks to bargain.

The Commissioner of Labour is empowered to conduct a poll of workers in order to ascertain the representative strength of a trade union that seeks to bargain with the employer.

The unfair labour practices enumerated in the amendment have been criticised by both trade unions and employers. Trade unions take up the position that the practices included are only those which are overt and blatant, and not those which are coercive and indirectly prejudicial to workers and trade union activists. Unions also scoff at the fine of Rs.20,000 as the maximum penalty upon conviction of an unfair labour practice. On the other hand, the employers contend that actions by workers or trade unions have not been construed as unfair labour practices, and that the obligation to bargain is uni-directional, in that there is no obligation upon a trade union to bargain with an employer where the employer wishes to do so. It is therefore likely that these statutory provisions would be the subject of further amendment.

The above is a brief examination of some of the key provisions relating to collective bargaining in Sri Lanka. It is interesting to examine the manner in which the process evolved in Sri Lanka, within the framework of the provisions set out above.

4. The History of Collective Bargaining in Sri Lanka

The first documented collective action by workers in Sri Lanka was by printers in Colombo in 1893, and thereafter by carters in 1906, and railway workers in 1915. While these strikes and labour action were not entirely successful from the point of view of improvement of conditions of labour of the workers concerned, they served to highlight that labour needed to unite to obtain better terms and conditions. Since those initial strikes, labour in Sri Lanka demonstrated an increasing tendency to resort to militant trade union action to achieve their rights.

In such a climate a remarkable development was the signing of the first collective agreement between labour and employers. In 1929 the tramcar workers' strike for better terms and conditions was accompanied by unprecedented violence by the general public in Colombo (who were supportive of the strikers) against the police. The Employers' Federation of Ceylon, a grouping of the main British business firms in Ceylon formed in 1928, being concerned with the disruption of industry by the escalation of strikes, entered into the agreement with the trade unions under the umbrella of The All-Ceylon Trade Union Congress. In return for recognition by member firms of the Employers' Federation of Ceylon, the unions agreed not to call a strike without first attempting to arrive at a settlement with the employer, or in the event of negotiations failing, not to strike without giving the Employers' Federation seven clear days' written notice of the intention to strike.[9] This collective agreement marks a watershed in the process of industrial relations in Sri Lanka, for it is the first express recognition by employers of the right to organise and to bargain collectively for better terms in return for industrial peace, and was also far-ahead of collective agreements in operation in other parts of the world.

In 1931, following the recommendations of the Donoughmore Commission, Ceylon was granted universal suffrage - the first colony to be granted the franchise - which was explicitly intended to enhance the responsiveness of the government of the day to the needs of labour. The Commission's recommendation was made specifically to remedy "the backward character of social and industrial legislation in Ceylon."[10] One writer comments on the franchise as a presentation of "the potential for considerable political power . . . to workers, providing and incentive for aspiring politicians to enter the trade union field."[11]

It is noteworthy that the Ceylonese worker gained the political right to vote before his trade union and industrial rights were recognised, and it became inevitable that the right to vote should be used to obtain the right to organise. Similarly, since the workers themselves had demonstrated their willingness by then to band together to achieve their demands, socialist political leaders turned to trade unionism as the main machinery to develop mass base support for their party. Thus, unionisation led by the employees themselves did also come about, but the major trade unions were organised by leaders of political parties.

Trade unionism in Sri Lanka has remained vibrant and dynamic since that time under Colonial rule, but has also demonstrated a tendency to be aligned with the policies and causes of the principal political parties in independent Sri Lanka. However, trade unions have had an important impact in the workplace, and have played a key role in the development of industrial relations.

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[9] Amerasinghe, E.F.G., Employers' Federation of Ceylon, 1994: 49, 140-141
[10] Ceylon: Report of the Special Commission on the Constitution: His Majesty's Stationary Office, London (1928: 83)
[11] Kearney, Robert; Trade Unions and Politics in Ceylon, 1971, page 4.

4.1 The Role of a Trade Union in the Process of Collective Bargaining

The determination of the workers' organisation entitled to be recognised as the bargaining agent on behalf of the workers engaged in the process of collective bargaining, is an issue of great importance. The issue of recognition of a trade union as a bargaining agent is a contentious one, especially where an employer refuses to accept a single trade union in his work place as representing his employees; or to recognise a particular trade union or union where one or more other unions have already been recognised as bargaining agents.

The concept of recognition of a trade union, as understood in Sri Lanka, is the acceptance of a union as a bargaining agent and no more. Where a recognised trade union is concerned, an employer would consider its role as the right to represent employees and to safeguard their interests in respect of matters arising from employment and the security of their employment. However, the trade union may consider its role to be much broader, and also covering political and wider economic issues.

The importance of the recognition of a trade union comes sharply into focus in relation to disputes between an employer and its employees. A dispute could be in relation to a matter of individual interest, or one involving a large number of employees. In the former instance, whether a union is recognised or not, the union has a right to represent an employee, and even if the employer refuses to discuss the dispute with the union, the union has the right to take such matter up in terms of the Industrial Disputes Act. This is based on the principle that, where the right to join a trade union is a Constitutionally recognised fundamental right, then the right to be represented by that trade union is a concomitant right.

However, in relation to a dispute involving a number of employees the matter of recognition of a trade union is now governed by statute, as discussed above in the examination of the provisions of the amending Act No. 56 of 1999, to the Industrial Disputes Act.

The Employers' Federation of Ceylon had, many years before the amendment, decided to adopt 'the 40 percent rule' as the minimum strength required to recognise a union as a bargaining agent. This applied to a category for whom bargaining is possible. For example, most employers treat clerical, supervisory and allied staff as being one category for bargaining purposes, whilst production workers, who could also be called manual workers, are considered as a separate category. This is based on the applicability of different legal provisions to production workers and to those working in offices.

4.2 The Case For and Against Compulsory Recognition

The agitation for compulsory recognition arose largely because many employers refused to voluntarily recognise trade unions for the collective bargaining process provided for in the

Industrial Disputes Act prior to the amendment in 1999. Compulsory recognition of trade unions was considered the solution especially as the Labour Department and the Courts have been in agreement that a dispute in relation to the recognition of a trade union does not fall within the purview of an industrial dispute under the Industrial Disputes Act No.43 of 1950. However, the matter has now been legislatively decided, but the determination of the Commissioner of Labour in relation to the category of workers from which the bargaining strength would be assessed in future disputes would be of particular interest.

A factor in the relationship between union and employer, and a practice that has generally followed upon recognition, that has attracted some attention recently is 'check-off'. The grant of check-off, is the execution of a standing instruction from an employee to his employer directing him to deduct union subscriptions on a monthly basis and to remit it to his union. This facility is of the utmost importance to a trade union as it provides financial stability and great convenience, in collecting subscriptions from its members.

It must however be noted that mere recognition of a trade union is not likely to solve the problems besetting industrial relations at present. In fact, it may increase tension by removing the right of the employer to refuse to bargain with a trade union which has engaged in activities prejudicial to the industrial harmony of the workplace, such as militant action involving damage to property, threats and injury to personnel, etc.

In this context it is also noteworthy that when the question of recognition of unions was debated prior to the enactment of the amendment, a veteran trade union leader commented that recognition by statutory means was necessary only for a weak trade union. He was of the opinion that a union must be able to obtain recognition by asserting itself by legitimate trade union action if its is to enjoy the confidence of its members.

It is also possible that compulsory trade union recognition could also have the adverse effect of encouraging more mushroom unions, thus adversely affecting the strength of the better-established unions. A multiplicity of trade unions within a workplace may, in some cases, prevent the operation of the statutory obligation regarding recognition from becoming applicable.

It must also be kept in mind that recognition of unions must go hand in hand with strengthening collective bargaining and giving pride of place to collective agreements. Employers in Sri Lanka have frequently complained that even where trade unions do not honour undertakings under agreements, the Labour authorities have done nothing to preserve the sanctity of these agreements. There have been instances also of references to arbitration, of demands that were not subject to negotiation in terms of a collective agreement. Whether the mandatory recognition of unions without the creation of a better rapport between the social partners would achieve the objectives of the amendment, remains to be seen.

5. Conclusion

The mere recognition of a trade union will not ensure that collective bargaining will *ipso facto* take place successfully. Collective bargaining has to be a bipartite exercise and the State has no role to play in the bargaining process itself. Strikes and industrial unrest are the result of disputes between employers and employees and must be settled by them. But the State can, and must, play a mediatory role. The State must also be involved when law and order are threatened. It has been contended by employers that when employees on strike commit criminal trespass or damage property, the authorities take the view that such matters are 'internal' and not a transgression of the law. Such a policy will only widen the chasm, and effectively hamper any meaningful dialogue between employers and unions.

If collective bargaining is to gain recognition and be effective, unions, employers and the State must accept the sanctity of such agreements and be prepared to bargain in good faith towards achieving a conclusive settlement for a specified period of time. There is also a lack of proper understanding about the process of collective bargaining. In some countries the agreement reached is published with appendices that consist of letters and minutes of meetings to explain the supplementary undertakings that are the bedrock of the agreement, thus preventing misinterpretation and misunderstandings on matters contained in the agreement. Collective bargaining can only work if such understandings, whether written or oral, are observed. In other words, good-will and honour among the parties are vital to the success of the process of collective bargaining.

An example of this mutual respect is the collective agreements signed between the Employers' Federation of Ceylon (EFC) and the Ceylon Mercantile, Industrial and General Workers' Union (CMU). These agreements have successfully withstood external pressures for over four decades and must certainly occupy a unique position in collective bargaining everywhere. It is unlikely that such a steadfast relationship could have been built or fostered where one party or another has been placed by statutory compulsion, and in the absence of a mutual commitment seeking to better the position of both parties.

"No Why" - The Right to Reasons in Sri Lanka

Naazima Kamardeen[*]

1. Introduction

Some element of rationality exists in all persons. It is the hallmark of the state of being human. It manifests itself in various ways – a need for method and order, for security and continuity, and for a logical system of behaviour. It is this rationality that urges a sense of justice and fair-mindedness in human activity, and arouses a feeling of outrage when those standards are not observed.

This paper attempts to analyse the application of the concept of natural justice, which is the judicial extension of the concept of fairness, in Sri Lanka, in the specific area of the provision of reasons by administrative bodies. It will consider the extent to which the courts have developed and refined the existing principles. In addition, it will also comment on the acceptance gained by the principle in Sri Lankan jurisprudence.

2. Natural Justice

2.1 Broad and Narrow Aspects

The term "Natural Justice" as opposed to "Legal Justice" would mean the natural sense of what is right and wrong.[1] Used to promote the fundamentals of good administration, it has proceeded along two main courses – that a man must not be a judge in his own cause, and that a person's defence must always be fairly heard. Today, the concept of "fairness" in administrative law has expanded to cover many new concepts such as Legitimate Expectation.[2] Natural Justice itself has become "one of the most active departments of administrative law."[3]

Wade[4] has commented that there are broad and narrow aspects to consider. The narrow aspect is that the rules of natural justice are merely a branch of the principle of *ultra vires*. Hence the violation of them would be a case of wrong procedure, or abuse of power, which violate the implied conditions intended by Parliament. We have already reached that stage in

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[1] Wade, H.W.R, & Forsyth, C.F., Administrative Law, 7th Ed. Oxford, Clarendon Press, 1994, at p. 464. It must be noted that the term today denotes the concept of fairness, and has little to do with nature. Indeed, the authors make the point that the closer one goes to a state of nature, the less justice one finds.

[2] Legitimate Expectation is an instance where an individual may legitimately be expected to be treated fairly. Wade (pp. 522-523) is of the opinion that the doctrine of Legitimate Expectation has developed, both in the context of reasonableness, and in the context of natural justice.

[3] *Ibid*, at p.465

[4] *Supra*, note 1

Sri Lanka, where the procedural aspect of natural law has been recognised and been given effect to. The writ jurisdiction of the Court of Appeal and the Supreme Court (and now also the Provincial High Courts) has been recognised and used in many instances, with no dispute regarding its validity or propriety.[5]

Commenting on the wider aspect of natural law, the point is made that it contains the "very kernel of the problem of administrative justice."[6] These questions are asked: "How far ought both judicial and administrative power to rest on common principles? How far is it right for the courts of law to try to impart their own standards of justice to the administration?" In developing the substantive aspect of natural justice, it is the activism of the courts that has contributed to the fanning out of broad and vague principles into an accepted body of jurisprudence.[7]

2.2 Natural Justice and the Right to Reasons

The development of the substantive part of natural justice has been less clear-cut, both in English and Sri Lankan law. Though it has been contended that the giving of reasons is "an essential element of administrative justice"[8] it was not in the past, a general rule of natural justice. A specific right to reasons has been recognised only very recently, and only in certain instances. It does not enjoy the same status that a procedural right might enjoy.[9] As such, it is still in a stage of evolution. Nevertheless, there are strong "reasons for reasons."

Firstly, the giving of reasons accords with common sense ideas of justice. When something is done to a person that s/he feels is unfair, the most natural tendency is to ask the question "why?" Secondly, the concept of reasonableness dictates that no act be done without good reason. When it comes to the field of administrative law, this requirement should be even more stringent, as it has the capacity to impact adversely on the life or livelihood of the individual. The existence of reasons communicates to the individual that the decision has been taken fairly, without malice, and is not arbitrary. Conversely, if the reasons are not sufficient, or are in any way defective, that would provide good grounds for the individual to seek redress from a court of law.

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[5] See Gomez, Mario, Emerging Trends in Public Law (Vijitha Yapa, 1998) at pp. 185-198
[6] *Ibid.*
[7] It must be noted at this point that if effort is being taken to develop a principle via the courts, then it is up to the courts to ensure that the principle is not attacked and disregarded on the ground that it is not a well established rule of law, or a statutory requirement (as then the question as to its validity would probably not have arisen in the first place) See, however, the discussion of the text at note 30, where the courts have refused to contribute to the expansion of the principle.
[8] *Ibid.*, at p. 542
[9] See the discussion, *infra*

Commenting on this, Wade has taken the position that:

> *"Unless the citizen can discover the reasoning behind the decision, he may be unable to tell whether it is reviewable or not, and so he may be deprived of the* ***protection of the law.***[10] *A right to reasons is therefore an indispensable part of a sound system of judicial review. Natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice."*[11]

2.3 Reasons Must be Given where a Right of Appeal Exists

The courts have held that whenever a right of appeal is given from the order of a Tribunal, a duty to record findings and give reasons is implied from the grant of such right of appeal.[12] The case of ***Ratnayake v. Fernando***[13] dealt with the Co-operative Societies Rules of 1973, which require the Arbitrator to give an award that is in accordance with justice, equity and good conscience. Here, the court was of the opinion that:

> *"since the Co-operative Societies Rules require the award to be in accordance with justice and equity,..... there is an implied duty to make findings of facts and set out reasons for such findings."*

The judgement drew attention to the case of ***Brook Bond Ceylon Limited v. Tea, Rubber, Coconut and General Produce Workers' Union,***[14] where it was held (regarding the discretion of the Labour Tribunal) that:

> *"considerations of justice and equity must necessarily act as fetters on the exercise of (that) discretion"*[15]

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[10] Emphasis added.

[11] *Supra,* note 1, at p. 542. Wade makes an interesting point, that a citizen may lose the protection of the law if s/he is not told the reasons for an administrative decision. While neither natural justice nor a right to reasons are by any means fundamental rights, the position in Sri Lanka is that the equal protection of the law is a fundamental right in terms of Article 12 of the Constitution. Hence, even if the courts of Sri Lanka do not clearly admit that there exists in all circumstances, a right to receive reasons, an applicant may be able to seek redress in terms of Article 12. However, the proposition that Article 12 mandates a right to reasons has thus far neither been urged, nor taken in any reported case. See, also, the discussion of the text at note 34.

[12] This position has been taken by the English Courts as well. In ***R. v. Lancashire CC ex.p. Huddleston*** [1986] 2 All. E. R 941, it was held by Sir John Donaldson MR, that once leave to apply for judicial review had been given, it was the duty of the Authority to make full and fair disclosure and to explain fully what has occurred and why.

[13] SC Appeal No. 52/86

[14] (1973) 77 NLR 6

[15] *Ibid.*, at p. 11. It has been held and generally accepted in this country that the Tribunals dealing with industrial matters exercise Just and Equitable jurisdiction. Sections 17, 31 and 24 of the Industrial Disputes Act No. 43 0f 1950 impose a duty on Arbitrators, Labour Tribunals and Industrial Courts to make orders that are Just and Equitable. One of the earliest definitions of a "Just and Equitable Order" was given by Justice T. S Fernando in ***Richard Peiris & Co. v. Wijesiriwardene*** (62 NLR 283). His Lordship stated (at p. 235) that "Justice and Equity can be measured not according to the urgings of a kind heart, but only within the framework of the law". Justice H.N.G Fernando, in ***Walker v. Fry*** (68 NLR 73) defined a Just and Equitable order to mean "one which is made in Equity and good conscience". Labour legislation is also regarded as Social Justice Legislation.

The court in that case went on further to add

> *"where an appeal lies from the order of a tribunal to a higher Court, ... it is the duty of the tribunal to ..... give reasons for its order..... It would be impossible for a Court of Appeal to discharge its functions properly unless it has before it the findings of the original tribunal as well as its reasons for the order it has made."*[16]

In ***Amaradasa v. Land Reform Commission***[17] the court was of the opinion that:

> *"there is no general rule that reasons should be given for decisions by an administrative body, but postulates of natural justice may warrant a departure."*[18]

Elucidating this point, it was stated that:

> *"A person prejudicially affected by a decision must be sufficiently notified of the case against him to enable him to exercise meaningfully his right of appeal. How can the appellant be expected to set out in his petition of appeal all matters to be urged in support of the appeal if he is not notified of the grounds of the adverse decision by the Commission? He should not be driven to surmise.....principles of fairness require that the Commission should at least apprise the parties of the reasons for its decision to enable the party affected by its order to substantiate his appeal."*[19]

2.4 Reasons as Part of Good Administrative Practice

The courts, both in England and Sri Lanka, have also taken the position that reasons should be given, not merely in situations where there is a right of appeal, but also as a matter of good administrative practice. The Sri Lankan courts have drawn from English case law to show that reasons should be given wherever possible:

> *"If a tribunal does not give reasons for its decision, it may be, if circumstances warrant it, that a Court may be at liberty to come to the*

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[16] *Ibid.*, at p. 9
[17] (1979) 1 NLR 505
[18] *Ibid.*, at p. 541
[19] *Ibid.*

conclusion that it had no good reason for reaching that conclusion and directing a prerogative order to issue accordingly."[20]

2.5 The Position at Present

Wade takes the view that:

> *"English Law has now arrived at the point where the duty to act fairly imparts at least a general duty to give reasons, subject to necessary exceptions, and this conclusion seems well justified."*[21]

The position, at least in England, is that the giving of reasons is the norm rather then the exception. Hence, there is a general duty to give reasons, subject only to certain restrictions.

The Sri Lankan position appears to be less evident. While our case law had proceeded on almost the same lines as in England, we, unfortunately, do not seem to have arrived at the same destination. The current position appears to be that there is no general duty to give reasons. This has been stated in the recently decided case of ***Yaseen Omar v. Pakistan International Airlines.***[22]

This case dealt with a workman employed by the Pakistan International Airlines, as its District Sales Manager. After about three years of service, his employment was terminated. The District Court held that his services had been terminated unlawfully. This judgement was affirmed by both the Court of Appeal and the Supreme Court, with minor variations. The judgement of the Supreme Court was delivered in 1987, twelve years after the workman's services had been terminated. The Court held that he was entitled to back wages as well as his job. However, even as late as 1998, neither had he been paid the wages due, nor had he been reinstated in his job. So he requested the Commissioner of Labour to make an appropriate order in terms of the TEW Act.[23]

The Commissioner instituted an inquiry based on a letter sent by the petitioner and subsequently issued an order directing the Airline Company to reinstate the workman and to pay back wages as well. This order did not contain any reasons for the basis on which the order had been made. The Airline Company then evoked the writ jurisdiction of the Court of Appeal, asking that a writ of certiorari be issued, quashing the order of the Commissioner, as

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[20] In ***Amaradasa v. Land Reform Commission,*** *supra*, note 12, citing the dictum of Lord Upjohn, in ***Padfield v. Mininster of Agriculture***, (1968) 1 All.E.R 694, at 719. The Judgement in ***Padfield***'s case was hailed by Lord Denning, MR, in ***Breen v. Amalgamated Engineering Union*** [1971] 2 QB 175 at 189 as "a landmark in modern administrative law"

[21] *Supra*, note 1, at p.545

[22] [1999] 2 Sri L.R 375

[23] Termination of Workmen (Special Provisions) Act No. 45 of 1971.

no reasons had been provided. The Court of Appeal upheld this argument, on the basis that section 17 of the TEW Act had not been complied with.[24] The workman then appealed to the Supreme Court against this decision.

The basis on which the workman proceeded was that although the giving of reasons by a tribunal may be desirable, failure to give reasons will not *ipso facto* render the decision of the tribunal void, when there is no statutory requirement mandating the tribunal to set down the reason for its decision.[25] Further, it was argued for the workman that when there is no general rule of common law or natural justice requiring reasons to be given for every administrative decision, failure to give reasons would not render the decision of a tribunal invalid.[26]

The Court considered a few English decisions,[27] some texts on the subject,[28] and the Sri Lankan case of ***Samalanka Limited v. Weerakoon et al***[29] in coming to the conclusion that there is "no statutory requirement imposed" on the Commissioner of Labour to give reasons for his decision.[30] The Court also maintained that:

> *"an examination of several decisions taken in different jurisdictions reveal that neither the common law nor principles of natural justice require, as a general rule, that administrative tribunals or authorities give reasons for their decisions for their decisions that are subject to judicial review."*[31]

3. The Breakdown in the Development of the Right to Reasons

The practical outcome of the judgement in ***Yaseen Omar's*** case (at least from the workman's

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[24] This section requires the Commissioner to conduct proceedings in a manner not inconsistent with the principles of natural justice.

[25] At page 378 of the judgement.

[26] *Ibid.*

[27] ***R. v. Higher Education Funding Council, ex. p. Institute of Dental Surgery*** (1994) All. E.R 651, where the decisions in ***ex. p. Cunningham*** (1991) 4 All. E. R 310, and ***Doody v. Secretary of State for the Home Department*** (1993) 3 All. E. R 92, were examined.

[28] Namely, de Smith's Judicial Review of Administrative Action [5th ed.(1995), at pp.457-458] where it is stated that "It has long been a commonly recited proposition of English Law that there is no general rule of law that reasons should be given for administrative decisions..... the giving of reasons has not been considered to be a requirement of the rules of procedural propriety..... as a general proposition, it is still accurate to say that the law does not at present recognize a general duty to give reasons for an administrative decision", and Wade on Administrative Law (7th ed., 1994, pp.544-545) *supra.*

[29] [1994] 1 Sri.L.R 405

[30] At page 384 of the judgement. *Supra* note 7. The point sought to be made is that there is no statutory requirement mandating that reasons be given; if there were, the issue would be beyond debate, or even judicial control. The reason why the issue is an issue at all is because it is one that depends on the assistance of the courts in establishing and recognising it.

[31] At page 380 of the judgement, citing the cases of ***R. v. Secretary of State for Social Services, ex.p. Connolly*** (1986) 1 WLR 421, and ***Public Service Board of New South Wales v. Osmond*** (1985-86) 159 Comm. L.R. 657, in support of this proposition.

point of view) was that it facilitated some measure of relief for the workman, for, had the Supreme Court held that reasons ought to have been given, the workman would have had no relief at all. In terms of norm-setting, though, this judgement has chosen to ignore the body of case law that had been developed by the courts, that had developed, at least to a certain extent, along the two lines discussed earlier – namely, that reasons should be given where a right of appeal exists, and also as a matter of good administrative practice. While the court focused on the Sri Lankan case of ***Samalanka***, it did not consider the cases that followed it, where the right to reasons has been developed still further.

The case of ***Karunadasa v. Unique Gemstones*** [32] dealt with the failure of the Commissioner of Labour to give reasons. This case distinguished ***Samalanka's*** case, and admitted a right to reasons on two bases – that reasons are part of good administration, and that Natural Justice includes a right to reasons.

> *"To say that Natural Justice entitles a party to a hearing does not mean merely that his evidence and submissions must be heard and recorded; it necessarily means that he is entitled to a* ***reasoned*** *consideration of the case which he presents. And whether or not the parties are also entitled to be told the reasons for the decision, if they are withheld, once judicial review commences, the decision may be condemned as arbitrary and unreasonable"*[33]

In addition, the Court considered the fact that Article 12 (1) of the Constitution guaranteed the equal protection of the law. Hence,

> *"In the context of the machinery for appeals, revision, judicial review, and the enforcement of fundamental rights, giving reasons is becoming, increasingly, an important protection of the law, ... for if a party is not told the reasons for an adverse decision his ability to seek review will be impaired"*[34]

The dictum in the Unique Gemstones case was cited with approval in the case of ***Ceylon Printers v. Commissioner of Labour.***[35] Hence, it could be said that by the time ***Yaseen Omar's*** case reached the Supreme Court, there was acceptance of the proposition that there existed in Sri Lanka, a right to reasons.

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[32] [1997] 1 Sri.L.R 256

[33] *per* Fernando J, at p.263

[34] *Ibid*, at p. 262. The Court here cited with approval, the comments made by Wade on this aspect of the right to receive reasons (see the discussion, *supra*, at note 11)

[35] [1998] 2 Sri. L. R. 29 at p. 39. In this case, Gunasekera J. cited the following from Wade, used in the ***Unique Gemstones*** Case (at p. 40) - *"In a series of cases it has been held that statutory tribunals must give satisfactory reasons in order that the losing party may know whether he should exercise his right of appeal on a point of law."*

4. Facts versus Principles: the Problem with Social Justice Legislation

Labour legislation in Sri Lanka is essentially social justice-oriented. This is seen in the fact that the Labour Tribunals are expected to exercise a jurisdiction that is 'Just and Equitable" as opposed to "Legal." An analysis of the local cases discussed thus far reveals that, with the exception of 2 cases, all the case law deals with decisions made under labour legislation.[36] If we consider the facts of the cases, we would find that in many instances, the granting of relief to the workman would have been delayed even further had the court insisted that reasons be given, and sent the case back for a proper inquiry. This becomes particularly significant in the light of the fact that so much time is taken before a case is heard and a final judgement delivered, that the economic pressure on an unemployed workman might become too great to bear, and hence a case should not be delayed merely for the purpose of refining principles.[37]

However, it is of importance, in a legal system that recognises the value of judge-made law and adheres quite strictly to judicial precedent,[38] that there are clear principles laid down by the courts. This would also assist the litigant to determine, based on the stance taken by the court on a particular situation, whether or not s/he has a case worth winning. Hence, judgements that may be justifiable from a social justice point of view, may not be as acceptable if they would have the effect of displacing a fairly well-settled judicial principle. Since ***Yaseen Omar's*** case made no reference to the cases that affirmed a right to reasons, it has neither overruled nor distinguished them.[39] It has, however, belied the statement that,

> *"Recent cases show that a general duty to provide reasons is likely to emerge as part of the Sri Lankan law in the near future"*[40]

5. The Right to Reasons as a Fundamental Right

We have so far considered the right to reasons as a part of good administration. Administrative principles, however desirable they may be, cannot be laid down in concrete terms, but can only be advocated by a progressive judiciary and used by administrative and

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[36] Either the Industrial Disputes Act No. 43 of 1950, or the Termination of Workmen (Special Provisions) Act No. 45 of 1971.

[37] The flip side to this argument would be that since so much time is taken anyway, an extra year or two would not make much difference to the parties!

[38] Both being legacies of the English legal tradition.

[39] It has been held that decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, should be held to have been given *per incuriam*. In such cases some part of the decision or some step in the reasoning on which it is based, is found , on that account, to be demonstrably wrong. This position was taken in ***Bilimoria v. Minister of Lands Development and Mahaweli Development et al*** [1978-79] 1 Sri.L.R 10 at p. 14, where the court cited with approval the dictum in ***Morrelle Ltd. v. Wakeling*** (1955) 2 WLR 673.

[40] The observation was made by Gomez, Mario, in 1998, *supra* note 5 at p.229, prior to the case of ***Yaseen Omar***

judicial tribunals. Hence, their application is limited. However, the right to reasons as a protection afforded by the law would bring it within the realm of fundamental rights, which are constitutionally guaranteed and, once recognised, undeniable. The view that a right to reasons is an important protection of the law has been discussed by Wade[41] and also by the Supreme Court in ***Karunadasa v. Unique Gemstones.***[42]

The right to equality and the equal protection of the law, apart from being a constitutionally guaranteed right, has also found expression in the International Covenant on Civil and Political Rights (1966). Article 26 of the Covenant mandates that:

> *"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."*[43]

6. Conclusion

6.1 The Need to Re-affirm a Right to Reasons

The foregoing discussion has revealed the fact that in a modern context, there is no excuse for refusing to recognise a right to reasons. Reasons are important not only from the standpoint of reasonableness, but also as a principle of good and fair administration. In fact, the right to reasons should be viewed as a basic right, leaving the courts to deal with the more contentious issue of the adequacy of the reasons given.

The case law in Sri Lanka, which has hitherto viewed the right to reasons only through cases dealing with administrative unfairness, has been unable to lay down a definitive principle mandating a right to reasons. It is submitted that the administrative law route is not the only route towards achieving this goal. The constitutional principle of Article 12 may well provide the fertile ground needed for the development of this right, as constitutionally entrenched absolute rights may not be sidestepped as easily as administrative principles.

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[41] *Supra,* note 11
[42] See the text, *supra,* at note 34
[43] Acceded to by Sri Lanka on 11th June 1980

Finally, if transparency and accountability are to be achieved by public institutions, it is essential that they are made to give reasons for their decisions. If not, the State would be facilitating irresponsibility on the part of its officers, which would not augur well for the efficient functioning of public institutions. The inefficiency and corruption of public bodies has now become somewhat of a standing joke, with not many of us pausing to reflect on how the situation could be rectified. It is submitted that if we are to create a more responsible and accountable society, the right to reasons should be recognised without exception in all situations. It is further submitted that the courts should endeavour to develop the law along the lines of justice and fairness without sacrificing progressive principles in the process.

Militarism, Colonialism, and the Trafficking of Women: "Comfort Women" Forced into Sexual Labour for Japanese Soldiers

*Watanabe Kazuko**

On 6 December 1991 Korean women who identified themselves as "military comfort women" filed a lawsuit against the Japanese government for violating their human rights. They demanded an official apology, some compensatory payment to survivors in lieu of full reparation, a thorough investigation of their cases, the revision of Japanese school textbooks identifying this issue as part of the colonial oppression of the Korean people, and the building of a memorial museum.[1] With this action these women finally started to break their silence and disclose the sexual war crimes committed by the Japanese Imperial Army almost fifty years ago.

The term *jugun ianfu*, "military comfort woman," is a euphemism for enforced military sex laborer or slave for the Japanese Imperial Army in the name of Emperor Hirohito. The term was coined by the Japanese government, military officials, and sexual industry agents, all hoping to obscure the dreadful reality behind the term.[2] The women were originally called "*teishintai*," which means "voluntary corps," with the Confucian connotation of self-victimization. According to Yun Chung-ok, the founder of the Korean Council for the Women Drafted for Sexual Military Slavery by Japan, in this context the term also conveyed the more specific meanings of "drafting of women for sexual service to Japanese troops" and

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[1] Jugun Ianfu Mondai Uriyosong Nettowaku (Military Comfort Women Issue Uriyosong Network), ed., *Kono han o toku* (To liberate this bitterness) (Tokyo, Jugun Ianfu Mondai Uriyosong Nettowaku, 1992); and Kaiho Shuppansha, ed., *Kim Hak-soon-san no shogen* (The testimony of Kim Hak-soon) (Tokyo: Kaiho Shuppansha, 1993). See the end of this article for a list of the names and addresses of twenty-three of the many organizations (thirteen mentioned in this article) that have dealt or are now dealing with comfort women and related issues.

[2] Kim Iryumiyon, *Tenno no guntai to Chosenjin ianfu* (The emperor's army and Korean comfort women) (Tokyo: Sanichi Shobo, 1976); Suzuki Yuko, *Jugun ianfu to Naisen kekkon* (Military comfort women and marriage between Japanese and Koreans) (Tokyo: Miraisha, 1992); Suzuki Yuko, *Chosenjin jugun ianfu* (Korean military comfort women) (Tokyo: Iwanami Shoten, 1991); and Suzuki Yuko, "*Jugun ianfu" mondai to sei boryoku* ("Military comfort women" issues and sexual violence) (Tokyo: Miraisha, 1994).

"patriotic voluntary military troops."[3] It was felt that Korean women would feel more obligated by the connotations of self-sacrifice in the term *teishintai* because they were educated in the Confucian tradition. In reality the practice of "military comfort women" suggests not only the institutionalized, collective, systematic rape of Korean and other women by Japanese soldiers but also trafficking in women. Moreover, one person who witnessed what happened at the time, military doctor Aso Tetsuo, commented that Korean women were treated as if they were inhuman "female ammunition" and often referred to as "sanitary public toilets."[4]

War often violates human rights, but the case of the so-called military "comfort women" must be one of the cruelest of such violations. The historical example of "comfort women" teaches us how war perpetuates the exploitation of women and the violation of their human rights. The number of victims involved is estimated as nearly 200,000, though it is possible that the figures are even higher. It reminds us that systematic rape, institutionalized prostitution, and sexual slavery as well as war crimes were not only practiced in the past but can still be seen near military bases around the world such as those near Davao, Naha, and Phnom Penh. The collective rape in the former Yugoslavia is another form of war crime. Thus war and sexual exploitation are closely related in their violence against women that cuts across sex, gender, race, ethnic, and class lines.

The use of the term "comfort women" is obviously itself a travesty, and it would certainly be more accurate to refer to the women who did this work as "enforced military sex laborers or slaves," as Pak Fam, a Korean activist living in Japan and the Association for Anti-Prostitution Activity suggest.[5]

Although Japanese, Chinese, Taiwanese, Filipina, Indonesian, as well as Dutch women also worked as "comfort women," the article focuses on Korean women, not only because they were the majority--80 percent--and have already formed a political movement, but also

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[3] Yun Chung-ok, "Chosenjin jugun ianfu" (Korean military comfort women), in *Chosenjin jugun ianfu mondai shiryoshu 3* (Chongshindae resource collection 3) (Tokyo: Chosenjin Jugun Ianfu Mondai o Kangaeru Kai). This collection is a Japanese version of Yun Chung-ok, *Chongshindae chaeryojip 3: chongshindae munje Ashia daehwee bokoso* (Chongshindae resource collection 3: report of the Asian conference on the "comfort women" issue) (Seoul: Hankuk Chongshindae Munje Daechaek Hyopwihwe [literally the Committee to Resolve the Comfort Women Issue, but the name used in English is the Korean Council for the Women Drafted for Military Sexual Slavery by Japan], July 1992).

[4] Nishino Rumiko, *Jugun ianfu: moto heishitachi no shogen* (Military comfort women: testimony of former soldiers) (Tokyo: Akashi Shoten, 1991), pp. 42-43. Jugun Ianfu Mondai Kodo Nettowaku (Military Comfort Women Issue Action Network), *Jugun Ianfu Mondai Ajia Rentai Kaigi Hokokushu* (Report on the Asian Association Conference on the Comfort Women Issue) (Tokyo: Baibaishun Mondai to Torikumu Kai [Association of Anti-Prostitution Activity], 1993); and Kim Iryumiyon, *Tenno no guntai to Chosenjin ianfu*, p. 17.

[5] National Christian Council, ed., *Report: The Asian Solidarity Forum on Militarism and Sexual Slavery* (Nishi-Waseda, Tokyo: National Christian Council, 1994).

because the colonial and imperial system is more clearly evident in their case.[6]

Disclosures by Comfort Women

At the meetings and interviews organized by the Military Comfort Women Issue Uriyosong Network around the December 1991 lawsuit, Kim Hak-soon, sixty-eight, was the only plaintiff who revealed her name. In tears, she related her experiences as a comfort woman, explaining that her decision was prompted by the fact that since all had died she no longer had any close family members who would be ashamed of her past. Kim Hak-soon reported:

> *When I was seventeen years old, the Japanese soldiers came along in a truck, beat us, and then dragged us into the back.... I was told that if I were drafted I could earn lots of money at the textile company, and that it was also the emperor's order. I was taken to China to serve as a comfort woman for Japanese soldiers at military bases. I was raped on that first day, and it never stopped for a single day for the next three months.*[7]

Often forced to accommodate dozens of soldiers in a day, Kim tried to flee three times. Twice she was caught and severely beaten, and finally on the third attempt she escaped with the help of a Korean man. They later married, but she lost her husband and children during the Korean War.

Since then significant political actions and campaigns around military comfort women have been on the increase, and hundreds of former comfort women have told similar stories. However, the Japanese government initially denied its involvement and rejected their demands for apologies and compensation, which infuriated the survivors of sexual slavery and motivated them to reveal their pasts and appeal through the courts.

On 13 April 1992 six more Korean women sued the Japanese government. One of them revealed how Korean women were captured and drafted from school. Shim Mija, a South Korean, was said to have rebelled against the Japanese occupation armies by embroidering morning glories instead of the Japanese national flower, cherry blossoms, thus symbolizing that the Japanese government would wither in the evening. She was taken away from her school by the police, who then tortured and raped her. When she regained consciousness, she

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[6] Zainichi no Ianfu Saiban o Sasaeru Kai (Support Group for the Lawsuit of Korean Former Comfort Women Resident in Japan), ed., *Sojo* (Written complaints) (Tokyo: Zainichi no Ianfu Saiban o Sasaeru Kai, 1993).

[7] Kaiho Shuppansha, ed., *Kim Hak-soon san no shogen*; and Jugun Ianfu Mondai Uriyosong Nettowaku, ed., *Kono han o toku*.

found herself already in a brothel in Japan. For the next six years she was forced to have sex with Japanese soldiers.[8]

In December 1992 a public hearing was held by a network of groups working on this issue in Tokyo.[9] Former comfort women from six countries testified before a panel that included Theo van Boven, an expert on international law and human rights and a special rapporteur for a United Nations Sub Commission on protecting minorities. Jeanne O'Hearn, a Dutch woman and the first European woman to testify as a comfort woman, calmly reported that two hundred Dutch women were forced to provide sex in Java. This event was broadcast on TV news programs in Japan. After this public hearing, the Filipina Comfort Women Core Group organized in the Philippines and filed a lawsuit against the Japanese government. Filipina women can locate brothels and have important documents to prove their claims because most of them were not destroyed after the war.

Supported by various human rights groups, on 5 April 1993 Song Siin-do, a seventy-one-year-old Korean living in Japan, filed a lawsuit against the government in the Tokyo District Court.[10] Her goal has been to change the perpetuation of sexual abuse of women, sexual exploitation, and war crimes under imperialism and colonialism; she has not asked for compensation.

Song Siin-do was also one of the survivors of violence against women who testified on 12 March 1994 at a public hearing of the Asian Tribunal on Women's Human Rights in Tokyo, organized by the Asian Women Human Rights Council and the Women's Human Rights Committee of Japan. Held after the women's human rights tribunal at the Vienna World Human Rights Conference in June 1993, this Asian tribunal brought female victims from other Asian countries to Japan to testify. These included survivors of the trafficking of women from the Philippines and Thailand who had worked as prostitutes in Japan, as well as sexual slaves for the Japanese military abroad and victims of war crimes. The "military comfort women" issue was recognized as a violation of women's human rights.

History of Comfort Women

Many historians and activists in Korea and Japan have worked to reclaim these women's

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[8] Hirabayashi Hisae, *Kyosei renko to jugun ianfu* (forced recruits and military comfort women) (Tokyo: Nihon Tosho Centa, 1992) p. 189.

[9] Executive Committee, International Public Hearing Concerning Post War Compensation by Japan, ed., War Victimization and Japan: International Public Hearing Report (Tokyo: Toho Shuppan, 1993).

[10] *Jugun Ianfu Mondai Uriyosong nettowaku Nyusuretta* (The Military Comfort Women Issur Uriyosong Network newsletter), no.5 (April 1993); and the Zainichi no Ianfu Saiban o Sasaeru Kai, Sojo. This support group also published a booklet, *Zainichi moto jugun ianfu, Song Siin-do* (The story of Song Siin-do, Korean former "comfort woman" resident in Japan) (Tokoyo: Zainichi no Ianfu Saiban o Sasaeru Kai, 1993).

pasts, reconceptualising this violation of human rights and historicizing the Japanese army's explicit military policy of wartime prostitution. Research shows that the modern Japanese system of prostitution for soldiers began as early as the turn of the century. In the invasion of Siberia starting in 1918 the Japanese military took Japanese prostitutes with them but then left them behind. Most of these women, daughters of poor farmers, had been sold into prostitution by their families and became prostitutes called *karayukisan*, foreign-bound (literally China-bound) women.[11]

In the 1920s, as part of Japan's imperial policies after the colonization of Korea in 1910, the Japanese Imperial Army began to mobilize Korean women as physical laborers or as enforced sex laborers. In particular, beginning with the Japanese invasion of China in 1932, the recruiting of Korean women as prostitutes was gradually institutionalized to arouse soldiers' fighting spirit, provide them with an outlet for the frustration and fear fostered by hierarchical military life, and, ostensibly, prevent random rapes. Since the official pretext of the war was that Japan was saving other Asian nations from colonization by Western countries, the Korean comfort women were needed to prevent Japanese soldiers from sexually abusing and collectively raping local Chinese women as they did during the Nanjing Massacre in 1937. The procurement of comfort women was institutionalized to avoid atrocities that would damage the reputation of the Japanese army.

At the beginning of World War II, the Japanese army brought Japanese prostitutes with them, but many of them were suffering from venereal diseases and infected the Japanese soldiers. So Japanese brokers recruited Korean village girls, seventeen to twenty years old, from poor families. Toward the end of the war, the supply of women was enlarged by more indiscriminate kidnapping of women aged fourteen to thirty, including married women. Under the enforcement of the Military Compulsory Draft Act in 1943, more women were taken by the Japanese Imperial Army; by then the number had reached approximately 200,000, among whom 70,000 to 80,000 were sent as comfort women to the front lines in Asia.[12]

The Japanese government initially denied its involvement and rejected the former comfort women's demands for apologies and compensation, which infuriated the survivors of sexual slavery and motivated them to reveal their past and appeal through the courts.

At the end of World War II, most survivors of military sexual slavery were not informed of Japan's defeat. During Japan's retreat, some of them were deserted by the Japanese army, some were massacred, and others were driven into trenches or caves and either bombed or gunned down. Some of the women who returned home killed themselves when they were

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[11] Many books on Korean comfort women are available in Japanese. My report is based on Suzuki's three books (see n. 1) as well as her speeches.
[12] *Ibid*

unable to overcome the bitter memories and shame; others survived in silence. Some of the former comfort women were obliged to support themselves by working as prostitutes in postwar Japan.[13]

Historically the emperor system and legal prostitution strengthened the double standard in Japan. The institution of prostitution was not legally prohibited until 1957. Enforcing respect for the emperor was used as part of the colonization of Asian people. Sixth-grade girls in Seoul's primary schools were drafted as teishintai laborers, called the emperor's children. A former Japanese teacher in Korea, Ikeda Masae, reported that "girls joined the 'comfort girls' corps of their own will by either persuading their parents or overcoming opposition from their family members."[14]

Comfort Women and the Trafficking of Women

The testimony of former comfort women and documents on them show how women were recruited by force, kidnapped from factories and farms, or taken away because of their rebellious attitude toward Japanese colonization. Each woman was made to serve an average of thirty to forty soldiers per day, with the soldiers waiting in line outside her small room. Women who were not submissive were brutally beaten and tortured, and escape was impossible due to strict surveillance.[15] Japanese soldiers were reminded that women were their common property.

Comfort women were usually placed in hierarchies according to class and nationality. Many Korean women seem to have come from lower-class worker and farmer families. Korean and other Asian women were assigned to lower-ranking soldiers, while Japanese and European women were for higher-ranking officers.

The institution of comfort women was a public practice. A document discovered in Washington, D.C. discloses how a civilian brothel owner who was captured in Burma applied to the Japanese army headquarters in Pyongyang for permission to transport the comfort girls. He took Korean girls he purchased from Pusan to Burma with tickets provided by the Japanese army.[16] In another example, because of the shortage of comfort women toward the

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[13] *Ibid.*

[14] Asahi Shinbun Sha, ed., *Onnatachi no Taiheiyo Senso* (Women's Pacific War) (Tokyo: Asahi Shinbun Sha, 1992).

[15] Kankoku Teishintai Mondai Taisaku Kyogi Kai (the Japanese name for the Hankuk Chongshindae Munje Daechaek Hyopwihwe, in English the Korean Council for the Women Drafted for Sexual Slavery by Japan [see n. 3]), ed., *Shogen: Kyosei renko sareta Chosenjin gun ianfu tachi* (Testimony: kidnapped Korean military comfort women) (Tokyo: Akashi Shoten, 1993). This book was written in Korean and then translated into both Japanese and English.

[16] Yun Chung-ok, *Chosenjin jugun ianfu mondai shiryoshu* 2-3, the Japanese version of Yun Chun-ok, *Chongshindae chaeryojip 2-3* (Chongshindae resource collection 2-3).

end of Word War II, Korean village leaders were ordered to send young women to participate in "important business for the Imperial Army."[17]

Most of the Korean comfort women were forced to lose their own nationality, called by Japanese names, and forbidden to speak Korean.[18] A notice hanging at the entrance to a brothel on the outskirts of Shanghai stated: "We welcome courageous soldiers who are on duty for the holy war; Yamato *nadeshiko* (literally the flower called "wild pinks of Yamato," meaning "our flowerlike women of Japan") obediently dedicate their minds and bodies to you."[19]

Those survivors, wherever they may be living, have been physically and emotionally battered. They suffer from physical health problems such as sterility, headaches, asthma, insomnia, and fears associated with their bitter experience. Nervous breakdowns are also common.

Why did it take fifty years to disclose this issue? Why have comfort women kept silent so long? These women's stories did not surface after the war in part because the Japanese government destroyed military documents and in part because many Korean women themselves tried not to face what happened to them. This may be a reaction in common with rape or sexual harassment cases where women often remain silent because of fear of further humiliation or being attacked again.

Confucian taboos put a priority in Korea on women's chastity, thus inhibiting women from speaking about their own sexual terror.[20] Confucianism trapped women into perpetuating both the patriarchal system that created a double standard and the chastity myth. Moreover, Confucianism allowed men to continue to own women as private property. In the beginning women often had only two alternatives: either they could become comfort women or they could kill themselves to protect their own chastity--which Korean Confucianism taught them to consider more important than their lives. To live was to be guilty. They thought loss of chastity was shameful to their families. Some survivors committed suicide or stayed away from their families and led solitary lives. Thus these women suffered doubly and triply from sexual discrimination. "I was afraid to reveal my past for fifty years, but now I realize I've got only a short life left, and I will tell the whole world," said Kim Hak-soon, the first former comfort woman to reveal her name in court.[21]

In Japan women tend to be divided into two categories for men: mothers and prostitutes. Mothers produce soldiers as well as male children in the patriarchal institution of marriage

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[17] *Ibid.*

[18] Zainippon Chosenminshu Josei Domei (People's Republic of Korea Resident in Japan Women's Association), ed., *Chosenjin "ianfu"* (Korean "comfort womenn") (Tokyo, Zainippon Chosenminshu Josei Domei, 1992).

[19] *Ibid.*

[20] Kim Iryumiyon, Jugun ianfu to Naisen kekkon; and Yun Chung-ok, ed., *Chosenjin josei ga mita "ianfu mondai"* (Korean women's view of the comfort women issue) (Tokyo: Sanichi Shobo, 1992).

[21] Jungun Iyanfu Mondai Uriyosong Nettowaku, *Kono han o toku*

and family, while prostitutes give the pleasure of sex in the equally patriarchal institution of prostitution. Women were, and continue to be, treated by men only as sex objects. Thus, the patriarchal, imperial, and legal prostitution system continued throughout Japan's period of modernization. The issue of comfort women as an integral part of Japanese patriarchy and imperialism cuts across divisions of state, class, gender, race, and ethnicity. Interwoven into all these divisions, the use of comfort women helped to institutionalize the trafficking of women.

Japanese Government Response to the Comfort Women Issue

On 16 January 1992, just before Japan's former prime minister Miyazawa visited South Korea, documents on "military comfort women" were discovered in the Self Defence Force Library in Tokyo by Yoshimi Yoshiaki, a professor of Japanese history at Chuo University.[22] Since then many documents on "military comfort women" have been found in Japan and Washington, D.C., and witnesses have come forward to disclose how institutionalised prostitution and sexual slavery were controlled and supervised by the Japanese Imperial Army.

The inhuman practice of comfort women is rooted in discrimination in gender, race, and ethnicity, and driven by the imbalance in the international economy and systematic commodifying of female bodies.

Until Yoshimi's discoveries of incriminating documents, the Japanese government kept denying the compulsory drafting and recruiting of Korean women. During his visit to Korea on 17 January 1992, however, the Japanese prime minister apologized to the Korean people in a public speech in Parliament. Nevertheless, at that time he ruled out compensation for the military comfort women, suggesting that war compensation between Japan and Korea was settled in a 1965 agreement on war reparations. His comment disappointed the Korean and Japanese people committed to this issue.

In its second report on comfort women, the Cabinet Councilors' Office on External Affairs finally stated on 5 August 1993 that the "government admitted that Japanese military authorities were in constant control of women forced to provide sex for soldiers before and during WW II, and the government apologizes and expresses remorse over the issue." However, the Japanese government still did not bring up the issue of compensation.

After a year of further criticism and pressure, in November 1994 the Japanese government announced its plan to promote youth exchanges, create a center to support the financial independence of women, and establish a private-sector redress fund including a donation from the government to provide former comfort women with alternative compensation.

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[22] Yoshimi Yoshiaki, ed., Jugun ianfu shogen shu (A collection of trial documents of military comfort women) (Tokyo: Otsuki Shoten, 1992).

However, former Korean comfort women and their supporters, primarily the Korean Council For the Women Drafted for Military Sexual Slavery by Japan, have rejected such donation or charity money as a token apology, demanding that the Japanese government provide compensation directly, along with an official letter of apology. The former comfort women and their supporters have been backed in this by a Geneva-based human rights group of legal experts from around the world, the International Commission of Jurists (ICJ)[23], which issued a 240-page report in late November 1994 urging the Japanese government to provide full rehabilitation and restitution, and as a purely interim measure the sum of U.S. $40,000 each to between 100,000 and 200,000 former comfort women.

The Korean Council for the Women Drafted for Military Sexual Slavery by Japan also announced in July 1994 that it would file a complaint with the Permanent Court of Arbitration in The Hague to clarify whether Japan is obliged to compensate individual women who were forced to provide sex for Japanese soldiers before and during World War II. The Permanent Court of Arbitration requires agreement by both parties, however, and the Japanese government repeatedly decided not to accept the request.

Comfort Women as a Feminist Issue and Action

In Korea agitation by the women's movement as well as anger at the Japanese government's attitude has brought the comfort women issue into the spotlight. The revelation of the condition of comfort women triggered stormy national protests, fuelling animosity in Korea and encouraging more disclosures and lawsuits. In both Korean and Japan, however, without the women's movement the disclosures about comfort women and their lawsuits may never have happened or perhaps would have taken much longer to surface.

The women's movement in Korea and Japan has started to encourage women to discuss their sexuality and control their own bodies. The most influential court case occurred in Korea in the late 1980s: a Korean woman for the first time talked publicly about being raped in prison by a policeman.[24] This case taught Korean women how important it was to protest all kinds of sexual abuse.

Both in Korea and Japan women have been discovering and renaming the violation of women's sexuality--including such sexual violence as sexual harassment, domestic violence, pornography, and stereotyped images of women and gender roles. Especially, women have

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[23] The International Commission of Jurists (ICJ) is a nongovernmental organization in consultative status with the United Nations Economic and Social Council. The U.N. Human Rights Commission decided in August 1992 to look into the issue of compensation for comfort women, and the resulting ICJ report is the outcome of its mission to the Philippines, North and South Korea, and Japan in April 1993. The ICJ mission interviewed more than forty victims, three former soldiers, and government representatives, non government organizations, lawyers, academics, and journalists. The report was then complied by Ustina Dolopol of Flinders University in South Australia. The International Commission of Jurists, P.O. Box 160, 26 Chemin de Joinveille, CH-1216, Cointrin/Geneva, Switzerland. Telephone, (41 22) 788-47 47; fax, (41 22) 788-488 80 –ED.

[24] Suzuki, Chosenjin jugun ianfu.

come to notice that sexual violence, violation of women's human rights, and sex industries and prostitution in Asian countries have worsened, and that women's bodies have been increasingly commodified. Sensing this situation, in the mid-1970s feminist activists in Korea began actions against the sex industries. At the same time, the Asian Women's Association was organized in Japan and started to protest Japanese men's sex tourism, establishing connections between Korea and Japan. Trying to examine prostitution historically, these women discovered the issue of comfort women.

Thus women started to make the connection between comfort women and the Japanese cultural apparatus responsible for the current trafficking of women and sexual violence. Sexuality was and is used to control and rule both men and women. Created through legalized prostitution based on patriarchy, colonialism, and imperialism, the system of comfort women clearly demonstrates that capitalism, sexism, and racism are linked and perpetuated both in the colonial and postcolonial eras.

Women's organizations and self-help groups were formed in Japan to politicize the issue. Through such groups women have been trying to bring about a revolution and liberation from patriarchy, militarism, and colonialism and to raise consciousness and establish their own autonomy. They have also been working to make this historic case of military slavery an international issue, utilizing international human rights laws that provide for an individual's right to compensation.

In August 1992 the Asian Women's Network of East Asian Countries was established in Seoul to exchange information, provide support, and nurture mutual empowerment.[25] The network sent a legal appeal to the U.N. Commission on Human Rights. This network has been creating a climate that will help survivors share their experiences.

In 1993 the second "Asian Solidarity Forum on Militarism and Sexual Slavery" was held in Tokyo with former comfort women and activists of eight Asian countries including South Korea, North Korea, China, Taiwan, the Philippines, Indonesia, Malaysia, and Japan. At the solidarity forum Asian Women's Network of East Asian Countries, the Korean Council for the Women Drafted for Military Sexual Slavery by Japan, proposed as an additional new goal the prosecution of the persons responsible for the planning and execution of military sexual slavery.[26] The lawsuit by the Korean council was not accepted at the Tokyo district court.

Comfort women's hot lines have been installed by civic groups in both Korea and Japan. In the first three days the Japanese hot lines received 231 calls in Tokyo and 61 in Osaka. Most calls came from veterans over seventy years old, army doctors, and female nurses. There was one call from a former Japanese comfort woman included in the report published as *Jugun ianfu 110 ban* (Military comfort women hot lines).

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[25] Jugun Inafu Mondai Kodo Nettowaku, ed., Jugun Ianfu Mondai Ajia Rentai Kaigi Hokokushu.
[26] National Christian Council, ed., Report: The Asian Solidarity Forum on Militarism and Sexual Slavery.

Three different types of action groups in Japan emphasize different aspects of the issues. The first type consists mostly of men such as the Karabao group, men's liberation groups, and Japanese-Korean groups who emphasize on racism, colonialism, and imperialism. They see the Japanese armies using sexual enslavement to castrate Asian men and colonize Asian women as a way of controlling these countries. These male-dominated action groups note that the Japanese army enslaved *Korean* women's bodies to protect *Japanese* women's chastity. Korean men living in Japan also felt dehumanized by Japan's degradation of Korean women. Sexual debasement in wartime contributed to the inability of the colonized countries to struggle for independence and their own identity as human beings. They were deprived of their human rights.[27]

In contrast, Japanese feminists groups, which are broad and the members of which are from many different professions, emphasize sexism. Women like Suzuki Yuko and other historians see in the issue of comfort women the universality of sexual violence and discrimination practiced in such sex industries as sex tourism and trafficking in women. They feel that both developed and developing countries share the guilt of sexual exploitation by treating women as commodities and creating a sexist culture.

One of these feminists, Fukushima Mizuho, a Japanese woman lawyer who has been working on the lawsuits of migrant Asian women workers and comfort women, points out the similarity between comfort women during wartime and migrant women workers who work in the sex industries in present-day Japan: "There is a parallel between comfort women and Asian women today who are deceived into coming to Japan and are then forced to work as prostitutes against their wills. Both of these groups were and are deluded by the same seductive voice: if you come to Japan, you will easily find well-paid jobs."[28]

Similarly, historian Suzuki Yuko suggests, sex tourism by Japanese men in other Asian countries and trafficking in Asian women is a contemporary version of the Japanese Imperial Army's prior exploitation of Asian women as comfort women. The only difference lies in whether men are in military uniforms or in business suits. It is male degradation of women as commodities.[29] This analysis has been pointed out by many other feminists.

Many feminists also believe that men too are victims and are treated as commodities in militarist and capitalist societies.[30] As they see it, male soldiers were regarded as animals in need of prostitutes because they were supposedly unable to control their own sexual impulses. Male soldiers were actually made inhumane in order to be "good" fighters. The military and colonial soldiers were stimulated by sexuality just like economic soldiers in the

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[27] Takagi Kenichi, *Jugun ianfu to sengo hosho* (Military comfort women and war compensation) (Tokyo: Sanichi Shobo, 1992).
[28] Fukushima Mizuho, personal interview with the author, April 1992.
[29] Suzuki, "Jugun ianfu" mondai to sei boryoku.
[30] *Ibid.*

postcolonial era. Prostitution is the reward for businessmen who may suffer death from overwork (*karoshi*) for their companies, as it was for the Japanese Imperial Army soldiers who were forced to risk death for the emperor on the battlefield. In this way women's sexuality has been used to expand the Japanese state's power in other Asian countries, and this continues today when migrant workers who come to Japan are forced into prostitution.

A third group, the Korean-Japanese women's groups such as the Military Comfort Women Issue Uriyosong Network based in Tokyo and the Group Considering the Korean Military Comfort Women Issue in Osaka, both of which were organized in 1991 to support former comfort women in Korea, tell us that the whole structure of sexism joined with racism allowed the Japanese army to institutionalize the comfort women system, and this combination continues today in sex industries that service Japanese men. The inhuman practice of comfort women is rooted in discrimination in gender, race, and ethnicity, and driven by the imbalance in the international economy and systematic commodifying of female bodies. Women's rights to control their own bodies were and are violated by a sexist and racist social structure both in the past and present. Korean-Japanese women in Japan themselves have no civil rights so that they have experienced social as well as racial and gender discrimination. Through protesting against the Japanese government and organizing international conferences together, Japanese and Korean-Japanese feminist groups have started a dialogue for working together for the future.

Protest against a Condom Manufacturer

Women's action groups, such as Osaka Women against Sexual Assault, women teachers' unions, and the Group Considering the Korean Military Comfort Women Issue, have formed a coalition linking the issue of comfort women with sexual violence, postcolonial exploitation by Japanese corporations, and racism in our everyday lives. As a symbolic action they have undertaken actions against the Okamoto Rubber Manufacturing Company, the biggest condom maker in Japan. This company recently produced condoms under two names, one of which bore the same name as the condom that the Japanese Imperial Army officially provided Japanese soldiers with, to use in brothels during World War II to protect the soldiers from venereal diseases. It is obvious that this reissued name is reminiscent of the comfort women and sex industries of earlier days.

The Okamoto Manufacturing Company monopolized the condom business during Word War II under the name Kokusai Rubber Company. During the present AIDS epidemic era, this company has expanded, building factories in Malaysia with the help of Japanese official development assistance money. Raw materials have been imported into Japan from the Asian countries the Japanese Imperial Army invaded, and the company's products have been sold in Asia as well as in the United States to help family planning, good contraception, and protection from AIDS. All this shows us how human-rights-violating sexism and racism are being perpetuated in the capitalist and postcolonial era.

Women's action groups have demanded that this company conduct research on its own company's past actions, take responsibility for its actions, publicly apologize for them, educate employees about human rights, acknowledge its part in the systematic rape of Asian women during World War II, and denounce violence against women. Also, these groups demand that each condom box have a label stating that "every sexual intercourse without the women's consent is a rape."

Conclusion

Unless sexual violence and the commodification of women's bodies is eliminated, there will always be comfort women. Recently the world has seen additional offensive cases, such as a representative of the Japanese government suggesting providing Japanese Peace-Keeper Operation (PKO) soldiers with condoms when they were sent from Japan to Cambodia. This equipping of men to buy women in other Asian countries brings to mind the practice of comfort women.

Social structures as well as our consciousness have to undergo change and victims have to be acknowledged as courageous survivors. A climate must be recreated in which women will speak out against rape, sex tourism, prostitution, and the use of comfort women. Women must unite to fight against myths that obscure reality. A global women's movement has encouraged women to establish a network to halt the trafficking of women, unify the peace movement, and also form support groups for former military comfort women. Japanese women must establish close networks with Korean-Japanese women in Japan as well as with Korean women in Korea to change the social structures that allow men to exploit women's sexuality.

Hwangbou Kangja suggests that the Japanese government's treatment of the comfort women issue is a barometer of its sensitivity to human rights. Global pressure is also needed to push the Japanese government to take full responsibility for what it has done in neighboring countries during war. The Japanese government is sensitive to international pressure. Women's collective voices must be a great force for change in the Japanese government's attitude regarding comfort women.

The United Nations Anti-Discrimination Act appropriately says that "without peace there would be no equality; without equality there would be no peace." To this it may be added that there will be no human rights either. Eight former comfort women have passed away in the last few years, three in 1993 alone. There is little time left.