The Characteristics of the Japanese Labour Law and its Problems

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I History of the Japanese Labour Law

1 The Japanese Labour Law has been formed with the development of Japanese capitalistic economy. Japanese economy before the MEIJI era was not fully developed under the influence of the feudalism. But as a result of a civil war, Shogun (Tycoon) retired, and the opening of the MEIJI era (1868–1912) marked a radical modernization of the total system in Japan. Japan began to develop rapidly as a new capitalist country.

To destroy feudalistic socio-economical relations under the reigns of Shogun, and to start as a capitalist nation, it was necessary to begin to guarantee individual freedom and equality of people by law, even under the MEIJI imperial system. The provision of a newly enacted Civil Code (1898) "Enjoyment of civil rights begins at one's birth", declearing that every person has civil rights by his birth on equal footing, characterized the beginning of the modernization of Japan.

Under the principle of the contractual freedom of civil law, a contract of employment can be freely concluded between employer and worker, without any restrictions whatsoever, on equal footing. But, unequality between an employer as master and a worker as servant continued, and the povety of workers who lost their rural home life was aggravated.

2 The starting point of the labour law in Japan was a series of protective laws for workers who worked under very low pay, extreme long hours of work and thus deprived of decent life, health, and even drived to death. Death and injury of workers which were caused and happened during their work, could be scarcely compensated by their

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employers, because the civil law principle is that only the damage which is caused by will or negligence of other person is compensated by that person. Thus a labour accident compensation act became the first labour law in every country. In Japan too the "Government Constructional Services Laborers Accident Allowance Regulation" of 1875 is the first labour law. In almost every capitalist country of the world, laws to protect life, health of factory workers and their families became indispensable. "Factory Laws" were progressively enacted in many capitalist countries during the 18th century and widespread in the 19th century. In Japan, the Government endevoured to enact a Factory Law, but met very strong resistance of factory owners, and it was not enacted until 1911. But the resistance of factory owners who feared loss of their profits, made the execution of the Law delayed until 1916.

The substance of the Law was dreadfully poor. For example, prohibition of employment of young workers was at 12 years (now 15 years), working hours of female workers and children under 15 years were restricted to 12 hours per day (now 8 hours) and no restriction for weekly working hours (now 40 in principle).

Japanese workers under these worst status and working conditions began to organize trade unions in 1897 and demanded enactment of substantial Factory Law and other labour laws. The Government of the Emperor strongly suppressed them.

3 The foundation of the International Labour Organization (ILO) in 1919 and the adoption of international labour conventions and recommendations strongly influenced a late developing capitalist country Japan, but soon after Japan dared to begin war against neighbouring countries, and in 1930 entered into 15 years war. Thus the development of labour law and advancement of trade union movement entirely stopped.

In 1945, the war ended, and the occupation of Japan by the Allied Forces began. It was the opening year of the era of democracy in this country, and many democratic reforms were made. In 1945, a new Trade Union Law was enacted immediately after the War. It recognized the lawfulness of trade unions and protected them by creat-

ing labour commissions (local and national). The commission protects workers and their organizations by ordering to stop unfair labour practices committed by employers and their organizations. By this law, the rate of trade union members which had fallen to zero at the end of the War (1945) increased rapidly, and it reached to 55.8% in 1949. This rapid increase is unprecedented in the world history of trade union movements.

In 1946, the Labour Relations Adjustment Law was enacted. This law provides the services of labour commissions to mediate, conciliate and arbitrate industrial conflicts rapidly, fairely and free of charge. In this year, a new Constitution was enacted. Above all, article 25 (the right to live), article 27 (1, right to work and 2, standards of working conditions shall be provided by law), article 28 (right to organize, bargain collectively and strike) provided a solid basis of labour laws.

In 1947, the Labour Standards Law replaced the old Factory Law, and provided working conditions slightly lower than those of ILO Conventions. This Law was enacted by virture of article 27 section 2 of the Constitution.

4 The Trade Union Law, the Labour Relations Adjustment Law and the Labour Standards Law are called three major labour laws, and compose the basis of the whole Japanese labour law. After 1947, the Minimum Wage Act, the Labour Accident Compensation Act, the Safety and Health of Labour Act, the Domestic Work Act, the Wage Protection Act and so on were enacted as branch laws of the Labour Standards Law. Thus laws concerning the protection of workers are now composed of a greater number of statutes.

To cope with unemployment which is an inevitable evil of capitalist economy, many statutes concerning assurance against unemployment, professional education and training etc. are enacted. They make a big group of laws called "protection of employment laws".

5 Meanwhile, in 1948, the supreme commander of the occupational forces, ordered to deny the right to strike in public sectors,

and to deprive the right to conclude a collective agreement of public servants. Following this order, the National Public Service Law was amended to cope with it, and the Public Corporations Labour Relations Act was enacted. After then, the Local Public Service Act (1950) and the Local Public Enterprises Labour Relations Act (1952) followed them.

The constitutionality of these laws are very doubtful, and workers organization of public sectors strongly protested against these laws (even by general strikes), but the Suprem Court ruled that they do not contravene article 28 of the Constitution. These laws are called "public sector labour relations law". Even after the Suprem Court decision, worker's organization continued their actions including strike, and suffered from severe sanctions including penal punishment.

6 It was the ILO that was utilized as one of the resisting tactics. To demand the ratification of the ILO Convention No.87 (Freedom of Association and Right to Organize Convention, 1948), and to amend provisions of public sector labour relations laws which contravened the convention became the slogan of workers organizations. After 8 years of struggle, in 1965, they achieved the ratification by the aid of the ILO. Many provisions which ran counter the Convention were amended, and this struggle is called the biggest movement of workers movement to recover their trade union rights in Japan after the World War II history. However, this struggle did not achieve its all aims (for example, recovery of the right to strike was completely denied), but it made clear that national labour law is, and must be tightly combined with international labour laws, especially those of ILO conventions.

The role played by the ILO can be found in countries other than Japan, but the experiences in the process of the recovery of democracy in Czechoslovakia and Poland are still fresh in our memory. Really the principle of labour law is and must be international.

II Characteristics of the Japanese Labour law

7 The first characteristic of the Japanese labour law is, owing

to the history of its development, COMPLEXITY. The basis of it is composed of above mentioned three fundamental laws. Each of them is now supplemented by many laws which are enacted time to time in correspondence with the economic and socio-political needs. And a special group of laws named "public sector labour relations laws", was originally compelled to obey the order of occupational forces, but now is endorsed by Suprem Court decisions.

The Trade Union Law and the Labour Relations Adjustment Law are called "collective labour relations law" because they regulate the relations between workers' organizations on the one hand, and employers and their organizations on the other.

The Labour Standards Law and related laws are called "individual workers' protection laws".

The public sector labour relations laws derived from an occupational order are special laws to the Trade Union Law and the Labour Relations Adjustment Law, and can classified as one of the "collective labour relations laws". The National Public Service Act and the Local Public Service Act contain provisions concerning absolute bans of strike and denial of the right to conclude a collective agreement, and thus constitute a special branch of laws to the "collective labour relations laws", but at the same time they provide individual servants protection system too. Thus those two laws have double characters.

Thus the first characteristic of the Japanese labour law is its complexity, owing to its history. To analyse these laws logically and to assemble them into one code of labour, as in France, has not been attempted in Japan. The Japanese Labour Law is the whole statutes which are added time to time, reflecting economic and socio-political needs and workers movements to demand for or to protest against them. So it is generally understood that there are no needs and no possibilities to codify them. It reflects the power balance between employers and workers, so Japanese labour law is naturally a mobile one.

8 The second characteristic of the Japanese labour law is the collective labour relations developed on the INDIVIDUAL ENTER-

PRISE BASIS. Almost every capitalist country, workers organized national unions on the professional, and/or industrial basis. But in Japan, the fundamental union structure is enterprise union, i.e., its union members are strictly limited to the regular employees of a given enterprise (company union).

Collective labour relations laws were enacted nearly 50 years ago. During the 50 years, the number of trade unions and their members experienced a considerable growth, but enterprises experienced more rapid growth and now a few numbers of huge companies and their affiliates dominate the national market, and thus the ideal of collective labour relations laws to secure equality between employer and workers by encouraging trade union organization has hardly attained, because it is difficult for company unions to be free from the influence of their employers.

During these nearly 50 years, there were very few amendments of collective labour relations laws except those concerning public sectors. Development of labour relations has scarcely affected those principal laws. For example, the number of provisions of the Trade Union Law concerning collective agreements, remains only 5. Capitalist countries have usually enacted a Collective Agreement Act (for example, Germany and France) and provided in great detail. The reason why a small number of articles are maintained in Japan is that the company unions agreements have effects only on the employees of a given company. Thus they are almost the same as the work rule of the company. So the need to amend the provisions of the Trade Union Law was weak.

Also in Japan, conciliation and arbitration of collective labour disputes is very rare. The reason of it is that the union and employer prefer to solve disputes within the company without any intervention of a labour commission.

In Japan strike statistics is nearly the lowest in the world. When a national industrial unions existed in Japan, for example, the miners union, which was one of the strongest unions, it did a very long general strike in 1959. But after 60's almost all mine industries disappeared in Japan, and the miners union lost its power. Every strike of a company union is small, and lasts short days or even only several hours.

The percentage of the organization of Japanese union members has fallen from 55, 6% (1949) to 24% (1994). It shows the weakness of Japanese trade union movements.

9 The third characteristic is the fact that the MINIMUM STANDARDS OF WORKING CONDITIONS provided by the Labour Standards Law are not completely given effect. For example, working hours of Japanese workers are 600 hours longer than those of German workers. Legally provided longest working hours in Germany is 48 hours per week, and in Japan, it is 40 hours. In Germany collective agreements provide less than 39 hours per week, but in Japan collective agreements (if exist) and written agreements agreed by employees' representatives provide a lot of over time work. Thus the total hours of work exceed 600 hours.

Also, the minimum standards of working conditions provided by the Labour Standards Law is lower than ILO standards. For example, the paid annual leave of the ILO convention (1970) is 3 weeks, but in Japan, it was extended from minimum 6 days to 10 days (1987). It must be remembered that Japan has ratifid no ILO conventions concerning working hours.

Japanese trade union movements have continuously demanded ratification of many ILO conventions, but the resistance of employers organizations is too strong to realise ratifications.

10 The fourth characteristic is the existence of various DISCRIMINATIONS between workers. The Labour Standards Law prohibits discriminations on working conditions with penal sanctions (article 3). But in reality there exist many types of discriminations. For example, a big company refused to employ a worker after probation because of his creed. Obviously it was a typical discrimination. But the Supreme Court interpreted narrowly the related provisions and ruled that a private company has freedom to hire the workers or not as his will. The same creed discrimination which overthrown czechoslovakian political system still exists in Japan.

There are many other discriminations, for example, by sex discrimination, wage differencial between men and women which is en-

larged in 90's. The ILO inspecting committee has pointed out that the principle of equal pay for equal work is not effected in Japan. Part-time workers are paid lower than comparable full-time workers, only because they are not regular workers. Even working the same work at the same establishment, non regular workers can receive less than half of regular workers' wage. The position of employees of subcontractor is the same as that of non-regular workers. Under this prolonged depression, Japanese companies are very eager to reduce personnel expenditure and hire more and more non regular workers with lower pay. Thus discrimination without any reason, are enlarging continuously.

A statistic shows only 3% of the workers are unemployed in Japan. But in reality, non-regular workers including part-time workers are substantially unstably employed, or half unemployed in the strict meaning of the word.

The Labour Standards Law can not settle this problem.

III The Problems of the Labour Law in Japan

11 The characteristics of the Japanese labour law which I mentioned bear following problems;

① Political situation in Japan now, is not apt to legislate an ideal labour law. So, it is a main task for labour law scholars to protect and advance workers' rights through interpretation of statutes in force. They make much contribution in making a lot of assertions in courts and labour commissions.

② There are many demands for a new legislation to protect and develop real workers rights. It may be combined with the demand for ratification of ILO conventions. Japan has ratified only 40 conventions. But Europian countries ratified 60 to 100 conventions. Japan must ratify fundamental ILO conventions as well as discrimination convention (No.111), forced labour (No.105), workers representative (No.135), tripartite consultation (No.144) and so on.

③ To support these legislative movements, strengthening the trade union movement is indispensable. Nearly all over the world, trade union movement is declining. Under this situation, how to recon-

struct union activities is an actual problem in Japan too.

④ At the same time, it is necessary to join trade union movements with the movements of citizens. After the fall of the socialist political system, many workers movements lost their ideology or ideal. Free market system, i.e. capitalist system itself born workers movement. Under this system workers lost their equality and freedom. It continues still now in a new form in every capitalist country. Thus, the necessity to protect workers by legislation and to advance trade union movements is still lasting everywhere.