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Pietas and prostitutes: ‘ideal’ victims and the pursuit for justice for South Korea’s military sex slaves

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Abstract

Sexual slavery has been an ongoing human rights issue within South Korea since World War II, yet discourse has almost exclusively centred on World War II sex slaves. Redress efforts typically focus on these survivors, their bodies symbolising the Korean nation, with post-World War II Korean sex slaves generally seen as ‘willing’ prostitutes. Nevertheless, the bodies, experiences and victimhood of all survivors remain contested. This paper discusses the connection between the ‘ideal’ victims, the World War II Korean sex slaves, and an example of ‘non-ideal’ victims, the *gijichon* women of the 1970s. Drawing upon recent judgments, Korean law and society, it analyses the impact of an ‘ideal’ victim construct upon survivors’ pursuit of redress in the Korean courts. In this paper I argue that, despite some success within domestic courts, the ‘ideal’ victim construct can explain why all survivors remain marginalised and have yet to receive full truth and justice.

Keywords: human rights; Korean studies; South Korean law; ideal victim; military sexual slavery; South Korea

1. Introduction

The topic of East Asian sexual slavery is most often associated with the so-called ‘comfort women’ of World War II. This focus on World War II sex slaves is reflected within wider academic and non-academic discourse. The general survivor narratives are well documented; their experiences and victimhood accepted. However, they have yet to receive legal redress, which has arguably contributed to their ongoing harm and marginalisation post-World War II.

Just as the harm of surviving World War II sex slaves goes beyond 1945, the use of Korean sex slaves is not limited to World War II. Other sex slaves arguably exist, including in the Korean War, the *gijichon* (camp-towns), *gisaeng* sex tours and the women engaged in ‘industry-style prostitution’ within contemporary South Korea (Soh 2008, pp. 207–23). Yet, their mention may be met with silence or perplexity. These post-World War II South Korean sex slaves remain on the periphery, both marginalised and silenced legally and socially.¹

In this paper I will address the continued marginalisation of both the sex slaves of World War II and the *gijichon* in the 1970s through analysis of South Korean cases brought forward by survivors seeking truth, acknowledgement and accountability. This examination is achieved through the

¹This paper focuses on elements of my thesis that argue that sexual slavery in South Korea is an ongoing and overlooked human rights issue (Mills 2022).

lens of the ‘ideal’ victim, a construct which I argue provides a means to reveal and understand why challenges remain for all survivors in seeking truth, justice and recognition of their experiences.

Section 2 of this paper provides an overview of the experiences of World War II and *gijichon* sex slaves, before drawing upon international criminal law definitions of sexual slavery to argue that sexual slavery extends beyond wartime contexts and can include both peacetime settings and instances of structural coercion, such as the experiences of the *gijichon* women. In Section 3, I set out the ‘ideal’ victim framework which is used as the foundation for the analysis of the cases analysed in Section 4. In Section 3, I argue that within South Korea the ‘ideal’ sexual slavery victim is built upon two elements: a woman’s perceived innocence, which is understood through sociocultural attitudes that have gone on to shape South Korea’s social and legal response to sexual violence broadly, and the ‘ideal’ perpetrator, which is based upon a state-led nationalist construct that applies specifically to South Korea’s military sex slaves. Section 4 applies the ‘ideal’ victim framework and examines its impact within recent judgments from the South Korean courts. I conclude that, while there is progress, more needs to be done to challenge the ‘ideal’ victim construct in order to bring marginalised survivors in from the periphery.

This paper sits at the intersection of South Korean law, international criminal law and feminist theory. While my primary focus is on the South Korean legal system’s treatment of military sexual slavery, international frameworks such as the Rome Statute are drawn upon to widen understandings of sexual slavery beyond an armed conflict and the exercise of physical ‘ownership’ context. Here, feminist perspectives and survivor testimony underpin the paper’s approach to the ‘ideal’ victim construct, its use and impact. Although victim/survivor-centred approaches within international frameworks (such as UN Security Council Resolution 2467 (2019)) are noted, this paper’s focus is on redress through the South Korean legal system.

2. South Korea’s military sex slaves

2.1. The experiences of women

The Japanese Imperial Army expanded into Manchuria in 1931. As they marched through mainland China (and later wider Asia), mass atrocities against civilians followed. Partly in response to these atrocities, as well as to minimise the spread of sexually transmitted disease and to avoid local brothels (from fear of resistance groups infiltrating them), the Imperial Army established a ‘comfort women’ system to fulfil the sexual needs of its men (Soh 2008; Min 2021). This system consisted of women forcibly recruited from across the Japanese Empire. Between 1931 and 1945, it has been estimated that up to 200,000 sex slaves were forcibly recruited from across Asia (Min 2021).

As the Imperial Army expanded, demand for ‘comfort stations’ increased and more women were ‘recruited’ (Min 2021). Impoverished women and girls were often coerced or deceived into the ‘comfort stations’, including through false employment offers in factories (e.g. Oh 1995), the use of influential members of the community to persuade families (e.g. Mun 1995; Yun 1995) and kidnapping (e.g. Kim 1995). Virginal girls were frequently targeted; survivors have testified that they were virgins upon their forced recruitment and were raped upon entering the ‘comfort women’ system (e.g. Hwang 1995).

The living and working conditions for sex slaves were poor. Women were malnourished (e.g. Yun 1995; Yi 1995) and were forced to work long hours ‘serving’ many soldiers (e.g. Mun 1995), including when ill or while menstruating (e.g. Yi 1995). Women had limited free time, confined to the ‘comfort station’ and were often unpaid (e.g. Ha 1995; Yun 1995). Physical violence at the hands of soldiers as well as the ‘comfort station’ proprietors was common (e.g. Yi 1995). Sexually transmitted diseases were frequent and left many women with permanent health problems (Kimura 2003). There were also instances of forced abortions as well as the forcible adoption of babies if a woman became pregnant (e.g. Hwang 1995). World War II sex slaves were also killed by

soldiers, while others died as a result of their living conditions or from their 'comfort station' being on the frontline. Some women committed suicide (Ahn 2019).

Despite liberation in 1945, surviving women experienced decades of marginalisation due to the societal value placed upon virginity and chastity (Kimura 2003). Survivors have described their postwar lives as a struggle: they were unable to marry, have families or retain jobs, and they suffered from long-term trauma (Ahn 2019). Effectively abandoned by the Korean state and society, it was not until Kim Hak-sun's 1991 testimony that the experiences of sex slaves and their marginalisation began to be discussed within South Korea and internationally.

The use of Korean sex slaves to serve soldiers continued beyond World War II. An example of this is within the *gijichon* situated near US military bases (Moon 1997). *Gijichon* first appeared alongside the first US military base in South Korea in 1945 and a number remain today. The purpose of the *gijichon* is to provide rest and relaxation to deployed US military personnel (Moon 1997). Among the bars sit 'comfort stations' – intentionally named after the 'comfort stations' of World War II (Moon 1997; Shorrock 2019). At the height of their popularity in the 1970s, whose experiences this paper focuses upon, the operation of these 'comfort stations' was actively controlled by the Korean government (Soh 2008). During this period, it has been estimated that between 300,000 and 1 million women were working in the *gijichon*'s 'comfort stations' (Shorrock 2019) and significantly contributing to the Korean economy, which was still recovering from the Korean War (Moon 1997; Soh 2008).² The *gijichon* and its 'comfort stations' were also justified by the South Korean state on security and political grounds, as it was believed that their existence helped keep US forces in South Korea (Moon 1997).

While not all *gijichon* women were forcibly recruited, research into the industry describes it as 'exploitative' (Vine 2015). Many *gijichon* sex slaves came from impoverished backgrounds or were women already condemned as 'fallen women' by society (Moon 1997). For these women, working within the 'comfort stations' was necessary for survival. However, some women were physically coerced, deceived or kidnapped (Moon 1997). Deception often took the form of false job advertisements (Moon 1997), while physical coercion took the form of rape and sexual violence – once 'defiled', the women became 'fallen' and, with nowhere else to go, staying in the brothels was their only option (Shorrock 2019). Na-young Lee argues that separating the women by how they came to be is 'meaningless and unjust', as no woman is likely to become a *gijichon* 'comfort woman' entirely through free will (Lee 2017, p. 758).

The experiences of *gijichon* sex slaves were similar to their World War II counterparts. They were often treated as objects by the soldiers who visited them (Shorrock 2019). Some women were not paid in full or were forcibly financially indebted to their brothel proprietor. For women who did not have debt, the proprietors 'see to it that you incur some' (e.g. Nan-hee 1992, p. 203) unable to leave until they repaid their debt (e.g. Ms Pak 1992). The women were under constant surveillance; survivors report instances of security guards placed at doors and the use of peepholes (Cho 2008a). In addition, *gijichon* survivors reported experiencing physical and sexual violence from both clients and proprietors (Lee 2017). Some were even murdered by American GIs (Moon 1997). In the 1970s, a 'clean-up campaign' was launched by the Korean state in response to sexually transmitted disease, and the women had to undergo forced medical examinations (Moon 1997). Women had to carry venereal disease cards and were subject to 'humiliating, burdensome, inaccurate, and unfair' police and local authority checks (Moon 1997, p. 137). If women needed medical assistance, they often received dangerous treatment, which resulted in a number of deaths (Shorrock 2019).

Just like their World War II predecessors, the need for *gijichon* sex slaves was – and is – often justified as a 'necessary evil' by both South Korea and the USA, because of the view that men are entitled to sex (Moon 1997; Lee 2017). Conversely, this is not a view taken by Korean society,

²For example, Dongducheon near Camp Casey provided one per cent of South Korea's overall gross domestic product in the 1970s (Shorrock 2019).

which views *gijichon* women as a shameful reminder of South Korea's need to rely upon a foreign state for security (Lee 2017). Consequently, the women remain marginalised.

2.2. Defining sexual slavery

While the lived experiences of World War II 'comfort women' and *gijichon* survivors share similarities in terms of sexual exploitation, their differing contexts – wartime and peacetime – have arguably contributed to the social, cultural, political and, until recently, legal perception that World War II 'comfort women' are South Korea's only survivors of sexual slavery. The dominance of wartime narratives, reinforced by nationalist sentiment and international attention, has rendered peacetime survivors (such as *gijichon* survivors) outside the scope of victimhood, not only contributing to an 'ideal' victim construct but also to their marginalisation.

Contributing to this is the language and terminology used in South Korea when discussing sexual slavery. In Korean, the term 'comfort women' (*wianbu*) has long been used, instead of the Korean term for sex slave (*seongnoye*). *Wianbu*, which stems from the Japanese word *jūgun ianfu*, literally translating as 'comfort women who follow the military', has been criticised due to its suggestion that women embraced the 'spirit of patriotic sacrifice' and willingly 'followed' the Japanese military (Soh 2008, p. 57). Indeed, *wianbu* was also used in this euphemistic sense within South Korea, including within Supreme Court judgments,³ until the 1990s, to imply that a woman was a 'willing' victim (Soh 2008). From the 1990s with the emergence of survivor testimonies, the definition of *wianbu* changed to become a synonym of *seongnoye*. This shift in meaning was positive, particularly as the alternative – *seongnoye* – was not (and is still not) used due to 'the image of their being in abject slavery' being seen as harmful to the survivors' self-esteem (Soh 2008, p. 72). Linguistic analysis of the term *wianbu* reveals that it is used positively to discuss World War II survivor experiences, criticise Japan's response and advocate for justice (Park 2023, pp. 37–40). However, while helping to reposition World War II sex slaves as victims, the continued use of *wianbu* has also arguably contributed to the continued marginalisation of post-World War II sex slaves such as the *gijichon* women by limiting the parameters of sexual slavery to a wartime and colonial context, allowing for 'the continu[al] structural violence against women of the lower social classes' to be ignored (Soh 2008, p. 212).

Even when written in English, the translation for *wianbu* – 'comfort women' – is also problematic. Its euphemistic connotations imply that the women were willing prostitutes (Ahn 2019). The term also has patriarchal undertones. For instance, the lexis 'comfort' has feminine and motherly connotations, suggesting that women were providing motherly support for their 'boys', reinforcing the notion that women's role in conflict is to support men in whatever capacity they can, including by 'serving' their sexual needs. In short, the phrase 'comfort women' strips away the context of the women's sexual enslavement as well as their individual experiences. UN Special Rapporteur Radhika Coomaraswamy criticised the term 'comfort women', arguing that it 'does not in the least reflect the suffering, such as multiple rapes on an everyday basis and severe physical abuse, that women victims had to endure during their forced prostitution and sexual subjugation and abuse in wartime' (UNCHR 1996, p. 10).

As will be discussed, this link between wartime contexts and, in particular, World War II survivors and sexual slavery has contributed to the creation of an 'ideal' victim which stems from sociopolitical framing anchored in dignity, nationalism and perceptions of historical injustice. Survivors, such as the *gijichon* women, whose experiences are entangled with transitional 'peacetime' society, remain on the periphery. International law as well as feminist perspectives on sexual slavery can offer a clarifying lens, providing the foundation to widen the scope beyond armed conflicts and thus supporting women's experiences in other settings, like in the *gijichon*.

³For example, Supreme Court, 66Da1635, 18 October 1966.

The International Criminal Court (ICC) considers sexual slavery both a crime against humanity and a war crime. It has two components: the ownership of a person and the use of sexual acts. On ownership, the ICC expands on the definition of the 1926 Slavery Convention,⁴ combining 'ownership over one or more persons' (which aligns with the Slavery Convention) with a broader definition to include those perpetrators who 'impos[e] on them [the victim] a similar deprivation of liberty'.⁵ This expansion is much needed, particularly for World War II sexual slavery survivors, as Japan has to date relied upon the 1926 Slavery Convention to deny the experiences of survivors (UNCHR 1998).

The Rome Statute draws upon the conceptualisation of sexual slavery found within ad hoc international criminal tribunals, most notably the International Criminal Tribunal of the former Yugoslavia (ICTY) (Grey 2019, p. 114). For instance, *Kunarac et al.*⁶ the ICTY recognised that repeated sexual violence, physical coercion and control over a person's activities, including control of sexual autonomy, constituted sexual enslavement. This includes both physical acts of confinement and restraint as well as threats, psychological coercion and deception. Importantly, the ICTY structured its construction of sexual slavery to take into consideration the non-consent of the victims. Consent was likewise understood by the tribunal to go beyond physical acts of resistance, to additionally include instances where a woman was denied her sexual autonomy (Askin 2003, pp. 224–338; Viseur Sellers and Getgen Kestenbaum 2020, p. 378).

While the Rome Statute does not include a victim's non-consent in its definition of sexual slavery, 'deprivation of liberty' could also be construed to include forms of structural coercion such as economic coercion and other forms of deception (Grey 2019, p. 114) and the statute's recognition of sexual slavery as a crime against humanity naturally broadens the scope to include non-conflict settings. This broader conceptualisation of sexual slavery is important and necessary. Not only does it provide the foundations for a gender-conscious approach to sexual violence but it also paves the way for supporting survivor-centred interpretations of sexual violence and thus ensuring redress meets the needs of survivors, an aim which the UN Security Council advocates, as highlighted by Resolution 2467 (2019). This approach is particularly important for Korean survivors of sexual slavery. Not only does it strengthen the recognition of World War II survivors as victims of sexual slavery, but it also supports the experiences of military sexual slavery in peacetime contexts, such as the experiences of *gijichon* women, whose structural coercion has long been overlooked by a legal discourse that is heavily focused on wartime contexts.

The importance of recognising and including structural coercion and women's sexual autonomy in definitions of sexual slavery has long been recognised and advocated for by feminist scholarship. Sociologist Kathleen Barry defines sexual slavery as 'present in ALL situations where women or girls cannot change the immediate conditions of their existence; where regardless of how they got into those conditions they cannot get out; and where they are subject to sexual violence and exploitation' (Barry 1979, p. 40).⁷ Similarly, in her examination of sexual slavery within international humanitarian law, Kelly Askin argues that each woman should be able to determine the conditions of her work, including making decisions about her body, as well as having the freedom to leave or refuse work at any point. Failure to do so 'assumes whole or partial ownership rights over the victim' and could constitute an example of sexual slavery (Askin 1999, pp. 83–84). Carmen Argibay also defines sexual slavery around consent and the ability for a woman to make wholly 'free and informed choices' (Argibay 2003, p. 380). Argibay notes that consent cannot be attained where there has been deceit or coercion, physical or mental abuse, fear

⁴Slavery Convention (adopted 25 September 1926, entered into force 9 March 1927) 60 LNTS 253.

⁵International Criminal Court, 'Elements of Crimes' (2010) <<https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>> Arts 7(1)(g)-2, 8(2)(b)(xxii)-3, 2(2)(e)(vi)-2.

⁶*Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic* (Trial Judgment), IT-96-23-T & IT-96-23/1-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 22 February 2001.

⁷Emphasis in Barry.

of consequence or reprisal or where the woman is 'subject to inhumane and debilitating conditions, kept isolated from social support or denied the means of survival and without access to means of communication, assistance, or redress; or when there is exploitation of the victim's vulnerability' (Argibay 2003, p. 380).

Inclusion and acceptance of structural coercion within the scope of 'sexual slavery' arguably allows for a more victim-centred understanding of sexual slavery, one where the experiences of women are at the centre, rather than the wartime or peacetime setting of their sexual enslavement. Such approaches to sexual slavery would, therefore, reflect and encompass the experiences of *gijichon* women, for example. However, it is important to note that taking such an approach also needs to reflect upon the survivor's experiences. While many *gijichon* women may see themselves aligned with definitions (both international and sociological) of sexual slavery, there are also *gijichon* women who may not view their experiences in such a light and instead do not see themselves as victims or survivors of sexual slavery or of anything at all, but simply working women whose profession happens to be one that marginalises them.⁸ As such, an understanding of sexual slavery needs to be survivor-centred and take into account not only the experiences of women but also the women's own understanding of their own experiences. In other words, it is the survivor who defines whether or not her experience is one of sexual slavery.

In her 1998 report, UN Special Rapporteur Gay McDougall advocated for a 'gender-conscious analysis' of sexual slavery, one which allows for the victim's experiences and perceptions of harm and coercion to be understood (UNCHR, 1998). As such, McDougall took a wide approach to defining sexual slavery, in which the definition included other forms of sexual violence against women in wartime, such as forced marriage and prostitution, where the exercise of power over a woman's sexual autonomy and other forms of coercion are present. This is particularly beneficial when addressing the negative connotations of sexual violence, such as the focus on women's honour and chastity which is often the focus in forced prostitution (Askin 1999; Argibay 2003). While her report focused on sexual violence in wartime, McDougall's approach nevertheless offers a means to break the association between sexual slavery and wartime settings.

The continued focus on sexual slavery occurring within wartime contexts is problematic. This narrow lens allows sexual slavery in transitional and peacetime settings to be overlooked, resulting in survivors, such as those of the *gijichon*, being labelled as 'willing' prostitutes/victims. Armed conflict is often seen as a male bonding experience where entrenched peacetime patriarchal attitudes are more justifiable (Barberet 2014). Thus, war often provides an acceptable context for sexual violence, where it is an act that demonstrates conquest. The committing of sexual violence against women in wartime a humiliating physical act of subjugation of one state by another. This leads to the development of nationalistic perceptions of sexual violence, with women's bodies becoming a physical representation of the nation, and the men cast as the state and the nation's protectors (Eisenstein 2000). Addressing wartime sexual violence then extends beyond seeking justice for survivors; it also becomes an act of restoring the nation's honour.

In *The Second Sex*, Simone de Beauvoir ruminated: '[r]epresentation of the world, like the world itself, is the work of men; they describe it from their own point of view, which they confuse with the absolute truth' (de Beauvoir 1949/1997, p. 175). This summation is, arguably, the case in post-conflict societies, where wartime military masculinities often become embedded, shaping societal understandings of sexual violence and women's bodies (Barberet and Carrington 2018, p. 825). Thus, there is a link between wartime and peacetime sexual violence in how forms of sexual violence, such as sexual slavery, can be justified (Kelly 2000, p. 62). In both contexts, men ultimately use sexual violence to control women (Brownmiller 1975, p. 38). With sexual violence connected to ideas of purity, honour and innocence, coupled with additional symbolic layers that wartime sexual violence ascribes to the female body, a hierarchy of crime and victim is created (Henry 2013, p. 98).

⁸Sealing Cheng (2012) draws attention to this in their work.

In the context of wartime sexual violence, we can begin to see the creation of an 'ideal' victim. The female victim is presented in 'a simplistic and biased way, ignoring a wide scope of women's sufferings in war and making all other victims look trivial' (Nikolić-Ristanović 2011, p. 27). In peacetime, widespread military masculinities that permeate a post-conflict state help to create an 'ideal' act of sexual violence that is dominated 'by only one, although horrible, form of women's suffering' (Nikolić-Ristanović 2011, p. 27). The concept of the 'ideal' perpetrator can be clearly delineated, with wartime sexual violence often having a 'clear' perpetrator: the foreign 'enemy' state seeking to destroy a nation. However, in peacetime, this 'ideal' perpetrator is missing. The lines become blurred; gone is the enemy state, replaced instead by a familiar face, one still driven by the same (entrenched) militarised and patriarchal attitudes. These are the challenges that both World War II and *gijichon* sex slaves face in claiming their victimhood and accessing truth and justice.

Centring on the experiences of survivors is therefore crucial to not only understanding sexual slavery, but also to challenging perceptions and providing access to justice for survivors. It is for these reasons that I extend the term 'sexual slavery' beyond a wartime context to include peacetime and transitional settings, and to include structural coercion. I argue that for many South Korean women, regardless of wartime or peacetime, military or non-military contexts, the context and the experience itself makes it a form of sexual slavery. While this paper presents a case for both World War II sex slaves and *gijichon* women, the same argument can be applied outside of these contexts.

3. Constructing the 'ideal' victim in South Korea

Defining sexual slavery, whether legally or socially, does not guarantee the recognition of survivors. As this section will discuss, in South Korea, sexual slavery victimhood is also symbolic, constructed through sociocultural attitudes surrounding innocence, dignity and nationalism which together shape who is a victim/survivor and who is invisible. While World War II and *gijichon* sex slaves can be linked by their experiences and by the militarised masculinities used to justify their 'comfort stations', treatment and marginalisation, the recognition of both has been, and arguably remains, contentious. This section examines the socio-legal construction of the 'ideal' victim, demonstrating how language, attitudes and memory privilege the survivors whose experiences align with narrow notions of purity, honour and national sacrifice, while excluding those whose experiences do not conform, or indeed challenge, that 'ideal'.

Granting recognition to victims in a variety of contexts is often difficult, and it typically requires a balance to be struck between an individual's understanding of the harm they experienced and the state's understanding of the same harm (Pavlich 2005, p. 52). It is within the state's interpretation where challenges often lie. A state's interpretation is shaped by various political and sociocultural norms and it is the reflection of these norms that often allow the state to achieve its political aims (Mallinder and McEvoy 2011). A state's support for these norms can further entrench beliefs that may be problematic to victims at a societal level (McEvoy and McConnachie 2012, p. 531), and by taking such an approach, the state often focuses on an 'ideal' victim, at the expense of marginalising anyone who does not fit the 'ideal'.

For women, the 'ideal' victim can further enhance her marginalisation (McEvoy and McConnachie 2013, p. 498). The gendered 'ideal' victim is often the result of the dominance of male actors within a state (Zetes 2016, p. 1296), alongside deeply entrenched patriarchal sociocultural gender norms and expectations (Baines 2011, p. 481). These norms create assumptions founded on ideas of purity, vulnerability and innocence (Baines 2011, p. 481). Consequently, they have the effect of restricting women to the role of passive victims, denying them their actual experience (Mertus 2004, p. 110). When the harm is sexual violence, experiences are often viewed through a narrow lens, which may reinforce stereotypes, for example that rape is committed against helpless women by an enemy (Rooney 2007, p. 177), and is the 'worst crime'

that a woman can experience (O'Rourke 2011, p. 8). Additionally, women often have their experience defined by their loss of innocence and honour, a view that reinforces them as sexual objects, and removes their agency and control over their experience (Engle 2005, pp. 810–14). The consequences of this narrowed construct are many. Not only does it limit the scope of definitions of sexual violence but it also ignores the wider contexts that allow acts of sexual violence to occur in the first instance (Franke 2006, p. 824).

Women whose experiences of sexual violence diverge from the 'ideal' are often chastised rather than supported, with their experience often overlooked. To avoid this outcome, women seek to mould their experiences to fit patriarchal notions that construct the 'ideal' victim, putting forward narratives that may not reflect their actual experience (O'Rourke 2015, p. 119). This allows a woman's experience of sexual violence to be appropriated for political or social means, such as the pursuit of a nationalist ideology that equates the protection of women with the protection of the state (McEvoy and McConnachie 2013, p. 493). It also further entrenches patriarchal understandings and sociocultural expectations of womanhood and sexual violence, and continues to marginalise those who are already marginalised (McEvoy and McConnachie 2013, p. 493).

While attributes that make up the 'ideal' differ between researchers, two features are always present. The 'ideal' victim is typically someone who is viewed as wholly 'innocent' and whose experience of harm was committed by an 'evil' perpetrator (Christie 1986, p. 12; Schwöbel-Patel 2018, pp. 716–19). Both of these elements are likewise present in the use of the 'ideal' sexual slavery victim in South Korea. This section will briefly examine how both of these elements are constructed. The first subsection focuses on 'innocence'. I argue that the 'ideal' victim of sexual violence is mostly epitomised by her innocence, and it is this perceived innocence that decides whether her experience of sexual violence is a 'true' harm as opposed to a 'self-harm'. It is a domestic construct which can be seen across South Korea's understanding of all forms of sexual violence, whereby innocence is based on her conformity to sociocultural norms that emphasise the need for sexual purity, fidelity and chastity. It is this domestic understanding of sexual violence and women's perceived innocence in cases of sexual violence that the survivors of sexual slavery need to navigate in order to establish themselves as victim/survivors.

The 'evil' perpetrator is constructed around ideas of national identity, where the 'ideal' victim is harmed by a foreign power intent on harming the nation. This is a requirement that applies to sexual slavery survivors specifically. Unlike in domestic cases of rape, where society and the legal system almost exclusively focus on the victim's perceived innocence (and where the perpetrator is secondary, unless his actions of extreme violence help to reinforce her innocence), for the military sexual slavery survivors that this paper focuses on, the 'ideal' perpetrator is essential. I argue that the 'ideal' perpetrator must be a foreigner, whose actions are grotesque, and whose violence allows the state to position itself as a wounded nation.

The 'ideal' victim construct developed in this paper, while focused on South Korea, may also resonate beyond a Korean context. As highlighted by Schwöbel-Patel (2018), there is very much an 'ideal' victim presented within international criminal law, and as noted by Mertus (2004), Henry (2013) and Engle (2005), similar constructs have been seen in other post-conflict and transitional societies where acts of sexual violence and the loss of women's purity and innocence were also a symbolic representation of national trauma.

3.1. *The innocent virgin*

Sexual violence and other gender-based crimes against women are 'rife' within South Korea (Jung 2023, pp. 4–5). Yet fewer than thirty per cent of crimes meet the legal definition of rape, with even fewer going to trial (Jung 2023, p. 74). I argue that the construction of an 'ideal' victim, where emphasis is placed upon the perceived innocence of the victim/survivor, is at the heart of women's access to justice. This 'ideal' stems from a social construction based on perceptions of a woman's chastity, sexual purity and conformity to patriarchal sociocultural expectations as well as her

actions. For victims/survivors, including the South Korean military sex slaves that this paper focuses on in Section 4, being perceived as truly innocent aids in determining whether their experiences are accepted and supported, with those who fail to meet the threshold being dismissed, stigmatised and silenced.

At the heart of this perceived innocence lies sociocultural norms surrounding chastity and sexual purity, a norm that has become ingrained as a result of South Korea's cultural and religious history, particularly Confucianism, where chastity was intrinsically linked to a woman's personal dignity and honour as well as that of her family (Jung 2023, pp. 15–16; Choi 2014). Additionally, chastity is also often conflated with a woman's virginity, both treated as a physical state (Jung 2014, p. 47). The continued presence of chastity and emphasis on virginity in particular in contemporary Korean society has led to it being referred to among Korean sociologists as an 'ideology' (Jung 2014; Lee 2017). Korean women who have survived sexual violence often see their chastity and/or virginity as having been 'broken' or 'damaged' (Jung 2014, pp. 46–50), which has rendered them 'dirty' and worthless, leading to them blaming themselves for their rape (Jung 2014, p. 48). While attitudes toward chastity and virginity are beginning to alter among younger Koreans (Choi 2014, p. 167), the chastity ideology is 'still very much accepted' due to its entrenchment into Korean society (Kaku 2013, p. 149; Jung 2023, p. 236), with non-conforming women 'branded as threats to national integrity' (Kim 2003, p. 103).

Male-centred perceptions of rape prevail, with 'no really mean[ing] yes', and where only 'innocent' women make efforts to maintain their chastity (Yoo 2016, p. 40). This can be seen within media reporting of sexual violence cases, where the victim's youth, occupation and behaviour are placed at the forefront, used to structure their (non)innocence (Jung 2023, p. 79, 117; Cho 2008b, pp. 131–32) alongside grotesque depictions of their physical injuries.⁹ Attention is also paid to the 'damage' done to the victim and her family's dignity and honour, with her family also included as an indirect victim.¹⁰

This construct has found its way into the Korean legal system. Until 1994, the Korean Criminal Code listed crimes of sexual violence as 'crimes concerning chastity', necessitating that women demonstrate 'utmost force and threat' to substantiate claims of sexual violence.¹¹ In other words, rape was defined as the forcible removal of a woman's chastity, not as a violation of her sexual autonomy. Under this framework, women had to demonstrate that they did not 'invite' their assault, and made attempts to actively resist acts of sexual violence.¹²

Despite their renaming in 1994 and continuous amendment, these expectations remain. Courts still examine whether 'utmost force and threat' were used and whether the woman tried (but failed) to protect herself (Jung 2023, p. 74). This expectation assumes uniform and stereotypical reactions to sexual violence, expecting women to offer suitable resistance while also remaining vulnerable. As such, a woman's behaviour and the actions she takes are heavily scrutinised. Focus is often placed on the amount and type of physical resistance that the woman uses, with the woman needing to demonstrate that she was strong enough to resist and make attempts to protect her chastity, while also not being too strong that she was not at risk of rape in the first place (Kim and Yoon 2008).¹³

In short, within Korea, the 'ideal' victim of sexual violence must be seen to be 'pure' and chaste (Cho 2008b). Her behaviour and actions cannot be interpreted as 'inviting' sexual violence (Jung 2014). She

⁹For example, the reporting of the rape of a schoolgirl: Seo Ji-eun (2009) Brutal Rape of Eight Year Old has Nation Up in Arms. Available at: <http://koreajoongangdaily.joins.com/news/article/article.aspx?aid=2910833> (accessed 10 July 2025).

¹⁰For example, JoongAng Tongyang Broadcasting Company, '[스포트라이트][128-1] 집중추적, 조두순 돌아온다! 나영이 아빠 '마지막' 인터뷰!' ('[Spotlight] [128-1] Tracking Centre, Cho Doo-soon is back! Na-young's Dad's 'Last' Interview'). Available at www.youtube.com/watch?v=V6LTvqKUMPY (accessed 10 July 2025) [in Korean].

¹¹Korean Criminal Code (enacted: 18 September 1953). Available at <http://theme.archives.go.kr/viewer/common/archWebViewer.do?singleData=N&archiveEventId=0028528487> (accessed 10 July 2025) [in Korean].

¹²For example, the decisions of the Supreme Court: 91Do546 (decision 28 May 1991); 95Do425 (decision 5 December 1995).

¹³For example, Supreme Court 2014Do8722 (decision 27 August 2015).

must demonstrate that she tried to physically resist to preserve her chastity and that the crime rendered her unable to fulfil her societal role (Cho 2008b). Only then is she truly ‘innocent’ in the eyes of the Korean state, society and legal system. Those women who do not meet this threshold – or ‘ideal’ – are often not considered to be victims who need support, but instead are classed as ‘fallen’ women.

3.2. The ‘evil’ perpetrator

While innocence provides the foundation for the ‘ideal’ victim within South Korean legal and social discourse on sexual violence, for military sexual slavery – particularly where the acts are historical – this requirement is insufficient on its own; there is also the need for survivors to have an ‘ideal’ ‘evil’ perpetrator. In a South Korean sexual slavery context, I argue this ‘ideal’ ‘evil’ perpetrator is shaped not only by the severity of his actions, but also by his ‘otherness’. Similar to ‘innocence’, this ‘ideal’ perpetrator is a construct shaped by domestic attitudes. However, these are not sociocultural, but sociopolitical beliefs steeped in national identity and memory, whereby Korea itself is the victim. As this subsection demonstrates, this ‘ideal’ perpetrator has shaped public discourse on sexual slavery in South Korea, leading to the construction of an ‘ideal’ victim of sexual slavery that impacts survivors’ pursuit of justice in the national courts.

As noted above, sexual violence in wartime is an accepted symbolic act of physical domination of one state over another, with women’s bodies symbolising the nation (Baines 2011, p. 486). Brownmiller neatly describes the protection of the nation and, by extension, its women, as a

‘hallmark of masculine pride, as possession of women has long been a hallmark of masculine success. Rape by a conquering soldier destroys all remaining illusions of power and property for men of the defeated side. The body of a raped woman becomes a ceremonial battlefield, a parade ground for the victors’ trooping of the colours.’

(Brownmiller 1975, p. 38). These attitudes are carried over into transitional and/or peacetime settings, where they become embedded within post-conflict states. The result is a militarised and patriarchal understanding of sexual violence centred on women’s honour and dignity (Barberet and Carrington 2018, p. 825), where seeking justice for the woman is also seeking justice for the nation.

This militarised masculinity of sexual violence, where women’s bodies symbolise the nation and national honour, arguably informs South Korea’s post-colonial national identity. The application of this can be seen overtly within South Korean discourse relating to military sexual slavery and the construction of the ‘ideal’ perpetrator in particular. Hyunah Yang (1998) argues that, in the state discourse on World War II sexual slavery, the survivors are viewed as ‘property of the masculine nation’ resulting in World War II sexual slavery being not between ‘Korean women and Japanese men, but between Korean men and Japanese men’ (1998, pp. 130–31). This can be seen in the immediate aftermath of the first public testimonies by World War II sexual slavery survivors. Presenting a brief, explicit example, newspapers captured these attitudes through the publication of public reactions, such as this letter published by the *Dong-A Ilbo* on 20 January 1992:

‘This issue will not end with the apology of the Japanese prime minister. Nor will the issue be settled by compensation only to the old women victims. The event amounts to an act in which the Japanese throw their dirty sperm bucket into our Korean people’s face.’ (Yang 1998, p. 130)

Thus, the body of the World War II sexual slavery survivor becomes a site that reflects the suffering of the Korean nation at the hands of a colonial power; her sexual enslavement a symbol of colonial conquest; her innocence reflecting the innocence of the Korean state. Through World War II sexual slavery survivors, the Korean nation itself becomes the victim.

The construction of this narrative is important, particularly for transitional societies that are rebuilding national identity and constructing an agreed and unifying national memory. For South

Korea, a state that post-World War II went on to experience additional armed conflict (Korean War), US occupation and decades of authoritarianism under military dictatorships, this construction allows for the state to unify under one agreed and harmonising national identity.

However, this construction sits in opposition to survivor testimonies, where World War II sex slaves have also included the South Korean state as a perpetrator. Although survivors do not frame Korea as a direct perpetrator, their testimonies highlight that their experiences are not temporal and instead extend beyond their immediate confinement in the ‘comfort stations’, into postwar Korea and the stigma and marginalisation they faced resulting from their sexual enslavement, as well as the lack of direct action by the Korean state to seek justice against Japan on behalf of survivors.¹⁴

Narratives that place pressure on the state to reconfigure its national identity, such as the *gijichon* sex slaves, are unsettling as they present a challenge to Korea as solely a victim. The ‘ideal’ perpetrator then reflects the discomfort of a state, and a society, that is unwilling to look inward and becomes a tool to help the nation forget uncomfortable truths.

The symbolic function of the ‘ideal’ perpetrator is particularly overt in public and media discourse on the *gijichon* sex slaves. On the one hand, as detailed above, the *gijichon* women were viewed as patriots and victims of US imperialism. On the other, they are perceived as *yanggongju* – foreigners’ whores – and ‘willing’ victims. Grace Cho (2008a) argues that the experiences of many *gijichon* sex slaves pose a threat to these state and societal perceptions, and thus to the scope of sexual slavery within South Korea. This is because their experiences break the allocated boundaries of state understanding of sexual slavery: it occurred during peacetime setting with the support of the state and for a foreign military ally. A *gijichon* woman does ‘not rest obediently where “normal” Koreans or government officials ordered her to stay. She would serve as a haunting reminder to those who tried to distinguish themselves from her by making her presence felt as the excluded outsider that threatens the boundary.’ (2008a, p. 120).

4. Sexual slavery in the South Korean courts

While Kim Hak-sun’s public testimony began a national and international discussion on sexual slavery, the focus has been centred on the experiences of World War II sex slaves. Their bodies and experiences serve a nationalistic purpose: they are a symbol of the oppressed Korean nation targeted by a foreign colonial aggressor. The nation becomes the victim and thus justice is for the nation rather than addressing the needs and wants of survivors. In contrast, contemporaneous survivors, such as the *gijichon* women, remain on the periphery despite similar experiences to World War II survivors in terms of the women’s backgrounds, their ‘recruitment’, exploitation and ongoing treatment and marginalisation. These perceptions have impacted both the World War II and *gijichon* sexual slavery survivors in their pursuit of truth and justice, contributing to an ‘ideal’ victim that shapes who is recognised as a victim and whose sexual enslavement is acknowledged as legally actionable. As this section examines, survivors need to navigate this ‘ideal’ victim construct and challenge it in order to gain redress through national courts.

4.1. World War II sexual slavery

4.1.1. The Constitutional Court

Both Constitutional Court judgments in this section examine the fundamental rights of survivors. In case 2006Hun-Ma788, issued in 2011, the Court assessed the dignity of survivors to ascertain whether the Korean state had a duty to pursue redress against Japan on their behalf.¹⁵ In

¹⁴For example, testimonies of Kim Tokchun (1995, p. 49); Yi Yongsuk (1995, p. 57) and Hwang Kumju (1995, p. 79).

¹⁵Constitutional Court of Korea 2006Hun-Ma788, decision 30 August 2011.

2016Hun-Ma253, issued in 2019, the Court examined a joint South Korea–Japan political agreement that declared the issue of World War II sexual slavery closed.¹⁶

In judgment 2006Hun-Ma788, the Court considered a 1965 bilateral economic treaty between South Korea and Japan on the payment of damages for Korean property during Japan's occupation of the Korean peninsula.¹⁷ The treaty formally re-established relations between South Korea and Japan, providing economic co-operation and diplomacy in return for South Korea renouncing reparations. Article 2(1) declares that disputes are 'settled completely and finally', a position Japan still maintains (Ministry of Foreign Affairs Japan 2019). Regarding outstanding issues concerning property and rights, Article 3 of The Agreement provides a dispute resolution for both states. The World War II sex slave survivors sought an interpretation of the treaty's compatibility with the Korean constitution. They questioned whether their claims for damages 'have been extinguished' and whether the Korean government's unwillingness to use Article 3 and pursue dispute resolution on their behalf violated their constitutional rights.¹⁸

In judgment 2006Hun-Ma788, proclaimed as a 'landmark decision' (Koga 2016), the Court examined the women's loss of 'worth and dignity as human beings' with regard to their property rights,¹⁹ using Article 10 of the Korean Constitution that establishes dignity and happiness as a fundamental right that the state has a duty to protect.²⁰ In reaching its conclusions, the judgment does not focus on the experiences of the survivors and the Court does not ascertain the women's victim status. Instead, using their recognition by the state, society and international soft law, the Court recognises the survivors as victims from the outset. Nevertheless, it still utilises aspects of the 'ideal' victim construction to reach its conclusions pertaining to the women's constitutional rights.²¹

The Court focuses intensively on Japan as a direct perpetrator. It establishes that the survivors' dignity was 'ruthlessly and continuously violated' by Japan both during World War II and after, as a result of the Japanese state's view of the women as 'willing' prostitutes and its continual refusal to take legal responsibility.²² The judgment also references survivor attempts at gaining legal redress in Japan,²³ and takes the view that Japan is 'shift[ing] to the [political] right',²⁴ presenting another obstacle in their journey for redress.

I argue that the 'ideal' victim construct is at play in the language that the judgment uses to reach its conclusions. For example, the Court adopts the same terminology used within UN Special Rapporteur Gay McDougall's report on sexual slavery in armed conflict (UNCHR 1998). The 'comfort stations' are named 'rape centers or rape camps',²⁵ which bluntly communicates the 'far-reaching anti-humanitarian crimes' that the Japanese Imperial Army committed against Korean women.²⁶ This language reinforces the elements that make the 'ideal' victim construct; namely, the utmost force and threat the women endured and their forcible loss of chastity.

In particular, the Court reflects upon the women's loss of innocence to emphasise the survivors' loss of dignity. It uses the repeated term 'rape centres' to underline and criticise the Japanese state view that the women are considered 'willing' prostitutes. The juxtaposition of 'rape centres' and 'willing' prostitutes emphasises, without the need to delve into detail, their forcible loss of

¹⁶Constitutional Court of Korea 2016Hun-Ma253, decision 27 December 2019.

¹⁷Agreement on the Settlement of Problems Concerning Property and Claims and on the Economic Cooperation between Japan and the Republic of Korea (signed 22 June 1965) 583 UNTS No. 8473 ('The Agreement').

¹⁸2006Hun-Ma788, summary.

¹⁹*Ibid.* summary.

²⁰Constitution of the Republic of Korea (enacted 17 July 1948, amended 29 October 1987).

²¹2006Hun-Ma788, summary.

²²*Ibid.* s. 3[A].

²³*Ibid.* s. [B](7).

²⁴*Ibid.* s. [B](10).

²⁵*Ibid.* s. [B](9).

²⁶*Ibid.* summary.

innocence and chastity. I argue that the court frames dignity as something physical, with the loss of dignity as a physical loss.

An empirical study into South Korean perceptions of dignity concludes that, while definitions of dignity differ among individuals, Korean understandings of dignity are intrinsically linked with the fulfilment of one's societal role (Jo and Doorenbos 2009). An individual can gain dignity by meeting societal expectations and lose it when these societal expectations cannot be met (Jo and Doorenbos 2009). They note that Koreans will attempt to hide their perceived weaknesses in order to save 'face' and maintain dignity to avoid marginalisation (Jo and Doorenbos 2009). The study demonstrates how ingrained sociocultural norms and expectations are within Korean life, to the extent that being unable to meet these expectations is seen as shameful. Transferring these conclusions into a sexual slavery context, survivor testimonies often discuss the women's loss of dignity and the role of sociocultural norms play within that loss. For example, the loss of virginity and chastity was a source of shame for World War II sexual slavery survivors and contributed to their inability to speak out (e.g. Ch'oe 1995; Mun 1995). The state initially saw their loss of chastity as a source of national shame – a living reminder of Korea's subjugation by Japan – a view that contributed to their silencing for fifty years postwar (Kimura 2003).

Dignity has a material role in Korean society and is crucial to the harmony of both the individual and wider society, allowing national identity to prevail. The broad criterion of 'innocence' – specifically, virginity and chastity – is not only a physical element that belongs to an individual, but also linked to Korea as a nation. When a woman experiences a forcible loss of chastity/virginity by a foreign perpetrator, the nation also forcibly loses its chastity/virginity (Yang 1998). By extension, both the nation *and* the woman lose their dignity. With this as a basis, it is possible to understand the Constitutional Court's position on dignity. The Court's term 'rape centres' epitomises a physical act of destruction. It represents the physical loss of women's identity within society, and with loss of identity comes loss of dignity. As a result, the Court is able to conclude that survivors are entitled to reparations from Japan as a result of their loss of dignity.²⁷

The focus on the women's loss of dignity demonstrates the important role that the 'ideal' victim construct plays in the Court's decision-making. The Constitutional Court requested that the Korean government be proactive in requesting redress for survivors in accordance with the treaty, steps which are 'urgent' due to the age of the survivors.²⁸ The Court concluded:

'With all the aforementioned factors taken into account, pursuing dispute settlement under Article 3 of the Agreement would be the only rightful exercise of power consistent with the state's responsibility to protect fundamental rights of citizens. As the failure of the respondent to intervene has resulted in serious violation of fundamental rights, the omission to act is in violation of the Constitution.'²⁹

Here, the Court also examined whether the state's failure to seek redress on behalf of the women contributed to their loss of dignity. I argue that judgment 2006Hun-Ma788 is an example of the Court expanding the scope of the perpetrator of the women's harm and loss of dignity (and beginning to move beyond the 'ideal') to include the Korean state:

'Although the Korean government did not directly infringe on the basic rights of comfort women victims, it is liable for causing current disruption in settling their damage claims against Japan and restoring their worth and dignity as human beings by not specifying the substance of claims and employing a broad expression of "all claims" in signing the

²⁷Ibid.

²⁸Ibid. s. V(3)[B].

²⁹Ibid. summary.

Agreement. In that sense, it is hard to deny that the respondent has the duty to take specific action to clear the disruption.³⁰

In other words, by not supporting the women in their efforts to seek redress, the Korean government is contributing to their ongoing harm. However, this is as far as the Court goes and the Korean state's role as (in)direct perpetrator has been limited. The Constitutional Court does not examine examples of survivors' claims that their harm continued beyond 1945 nor does it comment on their ostracisation due to sociocultural norms and the state's silencing of the victim-survivors for fifty years postwar. Japan remains the main perpetrator of the survivors' (continued) harm both within the 'comfort stations' in World War II and beyond. By doing so, the Court frames the sexual enslavement of Korean women in World War II as an 'us' versus 'them' issue. The 'us' is extended to include the Korean nation; while 'them', refers to Japan. In other words, in judgment 2006Hun-Ma788, the Court repurposes the 'ideal' victim construct to reinforce a national victimhood. It is not only the survivor's loss of dignity that needs restoring, but the dignity of the nation.

The Constitutional Court's 2019 judgment, 2016Hun-Ma253, focuses on a 2015 bilateral agreement between South Korea and Japan on World War II sexual slavery. Judgment 2016Hun-Ma253 questions the constitutionality of the 2015 Agreement, which, according to the survivors, infringed their 'human dignity and value' as protected under Article 10 of the Constitution.³¹ The purpose of the 2015 Agreement was to end requests for Japan to be held legally responsible, with the issue of sexual slavery being 'irreversibly resolved'.³² Judgment 2016Hun-Ma253 was brought forward by twenty-nine surviving World War II sex slaves, two children of living survivors and nine children of survivors who had died since. The claimants argued that by making the 2015 Agreement, the Korean state violated the fundamental rights of survivors, their families and the families of deceased victims. In particular, the survivors and their families were concerned with a 'vague' phrase³³ within the 2015 Agreement which declared that South Korea and Japan 'confirms that this issue will be finally and irreversibly resolved'.³⁴ They argued that, as the 2015 Agreement absolves Japan's legal responsibility, neither they, the survivors, nor the state would be able to seek redress either directly through the Japanese courts or via other means. The survivors asserted that the Korean state fails in its 'duty to act in realising the claims for damages [...] thereby violating their rights to property, their right to personality, their right to request diplomatic protection, and, potentially, other rights'.³⁵

The survivors utilised judgment 2006Hun-Ma788 to support their arguments, demonstrating that they agree that their dignity is linked to their identity, and its physical loss contributes to their victimhood. In judgment 2016Hun-Ma253, the Constitutional Court reaffirmed the survivors' experiences of sexual slavery as 'unprecedented and unique',³⁶ and that their

'claims for damages [...] are not just part of their property rights enshrined in the Constitution, but also imply the post-facto restoration of the human dignity, sense of self worth, and bodily freedom which were ruthlessly violated. [...] Therefore [...] a failure to resolve the dispute [...] constitutes an infringement of the "comfort women" victims' basic rights, in contravention of the Constitution'.³⁷

³⁰*Ibid.* s. IV(B).

³¹2016Hun-Ma253, p. 92.

³²*Ibid.* p. 94–95.

³³*Ibid.* p. 96.

³⁴*Ibid.* p. 94–95.

³⁵*Ibid.* p. 96.

³⁶*Ibid.* s. A.

³⁷*Ibid.* s. A.

However, with regard to the Agreement that was the basis of the survivors' arguments, the Court concluded that it was entirely political. The Court determined that the Agreement was not a treaty, and thus the state still had a legal obligation to seek redress on behalf of survivors and concluded that the fundamental rights of survivors and their families were not violated. The Court also suggests that 'victim-centred approaches' be taken to achieve redress for survivors and their families.³⁸

Victim-centred approaches to redress would prioritise survivors' experiences, autonomy and interpretations of harm, rather than framing their experiences through nationalistic or symbolic narratives. Such an approach would be in line with UN Security Council Resolution 2467 (2019), which explicitly calls for survivor-led initiatives. In this respect, the Constitutional Court's advocacy for a victim-centred framework signals an important shift away from narrow legal definitions and 'ideal' victim constructs toward an approach that considers the broader context of the women's harm, such as historical silencing and postwar marginalisation.

Nevertheless, I argue that the language of the judgment suggests that the 'ideal' victim construct played a role in the Court's decision-making. Describing the women's experiences as 'unprecedented and unique' implies that the sexual enslavement of Korean women is confined to World War II. The implications of this are twofold: it suggests that there are no other officially recognisable instances of Korean sexual slavery, as well as implying that survivors of sexual slavery in other contexts are perceived as 'lesser' in comparison to World War II sex slaves.

Dignity also played a role in the Court's judgment. Discussions of the loss of dignity are used to support the Court's positioning on how to redress the women's harm. For example, by specifying that victim-centred approaches to redress need to be established:

'To ensure complete and effective recovery from harm corresponding to the severity of the harm suffered by "comfort women" victims and the historical context in which such harm occurred, it is crucial to take victim-centred approaches.'³⁹

I argue the language that the Court adopts in this quote recognises the complexity of World War II sex slaves' experiences. By acknowledging the wider context of the women's harm, it can be argued that the 'ideal' victim construct is being expanded. Generalising women's experiences and requiring that they fit a narrow victimhood silences women. It separates survivors of harm from their actual lived experience, often to put forward an over-simplistic understanding of their lived experiences which can be used to pursue or further particular attitudes and ideologies. Instead, the Court recognises that the entirety of the survivor experience needs to be examined to provide a victim-centred resolution to survivor dignity.

The Constitutional Court also explores the limitations of the 'ideal' victim through their examination of the survivors' continued loss of dignity. While the Court acknowledges that due to the political nature of the Agreement, it is unable to 'infringe on the basic rights of the victims',⁴⁰ the further loss of dignity and the 'pain the "comfort women" victims have suffered from the Agreement would never be considered minor'.⁴¹ In its exploration, the Court continues the trend of pushing the boundaries of the 'ideal' perpetrator to include the Korean state. When compared with the 2006Hun-Ma788 judgment, 2016Hun-Ma253 is much more explicit in recognising that the Korean government – by formulating the Agreement in the first instance and not providing survivors with support for redress – has a direct role in the survivors' ongoing harm. Read alongside the Court's request that victim-centred approaches be used to provide redress, the Constitutional Court places responsibility upon the Korean government to provide political and

³⁸*Ibid.* s. C.

³⁹*Ibid.* s. C.

⁴⁰*Ibid.* s. C.

⁴¹*Ibid.* s. C.

legal support for survivors' claims for redress, rather than waiting for Japan to take the first step and accept legal responsibility.

Both judgments 2006Hun-Ma788 and 2016Hun-Ma253 reveal the impact of the 'ideal' victim construct. Through its language and focus on dignity, the Constitutional Court reinforces a hierarchy of sexual slavery victims. Nevertheless, both judgments show the ability of the Korean legal system to move away from the 'ideal' via the examination of the Korean state as a potential contributor to the women's ongoing harm. Because the Court's focus was on the fundamental rights of the survivors as enshrined within the Constitution, it is perhaps unsurprising that the Court has been unable to examine other aspects of the 'ideal' victim. Nonetheless, the Constitutional Court has shown it is possible that the sexual enslavement of Korean women can be scrutinised at a legal, historical and sociopolitical level.

4.1.2. *Seoul Central District Court*

Sitting in contrast to the Constitutional Court, Seoul Central District Court has taken a more direct approach to survivors' experiences of sexual slavery. Unlike the Constitutional Court, where survivors sought support for their fundamental rights from the Korean state, World War II survivors used Seoul Central District Court in both January and April 2021 to gain redress directly from Japan.⁴² This change of approach was intentional due to survivors being unsuccessful within the Japanese legal system (Memory and Reconciliation in the Asia-Pacific 2024).

In judgment 2016GaHap505092, twelve survivors brought claims against Japan. They argued for the Court to hold Japan directly liable as well as for damages to be paid under Articles 750 and 751 of Korea's Civil Code.⁴³ Article 750 allows individuals to receive compensation from those who caused harm, Article 751 entitles individuals that have experienced 'damage to the body, freedom or fame [. . .] or other mental suffering' to receive remuneration from the perpetrators. The Seoul Central District Court examined the survivors' experiences alongside the principles of state immunity and the Korean Civil Code. The Court reached the decision that, regardless of customary international law, due to the harm being a crime against humanity, South Korea had jurisdiction over the Japanese state. They concluded that the Japanese state was responsible for the harm experienced by the survivors and ordered the state to pay 100 million won per survivor⁴⁴ as well as covering the women's legal costs.

Looking first at the judgment's summary, which provides a succinct overview of the Court's position, the Court declares that the survivors were 'forcibly subjected to sexual acts by Japanese soldiers regardless of their will'. As a result, it concludes that 'Japan is obliged to provide reparations "for the [women's] mental suffering"'.⁴⁵ I argue that these quotes generalise the World War II survivor experience and demonstrate adherence to the 'ideal' victim construct: the women being suitably vulnerable ('forcibly subjected to'; 'regardless of their will'); that they were 'subjected to mass rape' under utmost force and threat in line with the Criminal Code ('forcibly subjected to sexual acts') by an 'ideal' foreign enemy.

The Court's discussion of individual survivor experiences also provides an example of the 'ideal' victim construct, with each brief synopsis conforming to the 'ideal'. The age of the survivors at the time of their forced recruitment is highlighted; all but one survivor were teenagers (the youngest being fourteen).⁴⁶ This focus on their ages emphasises their vulnerability and acts as a subtle reminder of their chaste and virginal status. This reminder makes clear that the perpetrator intentionally targeted young, chaste and virginal girls. The judgment also focuses on particularly

⁴²Seoul Central District Court 2016GaHap505092, judgment 8 January 2021; Seoul Central District Court 2016GaHap580239, judgment 21 April 2021.

⁴³Civil Code (enacted 1 January 1960).

⁴⁴Around 60–61,000 GBP.

⁴⁵2016GaHap505092, summary.

⁴⁶*Ibid.* s. B.

brutal experiences, such as escaping sex slaves being ‘shot and killed’, forced medical examinations and physical and sexual violence.⁴⁷ The graphic presentation of these experiences in the judgment shows a more explicit utilisation of the ‘ideal’ victim.

Seoul Central District Court also focuses on establishing Japan as the ‘ideal’ and only perpetrator of the women’s harm. The Court explicitly labels Japan as the perpetrator from the outset, with the judgment demonstrating an interdependent relationship between the survivors’ victimhood and the ‘idealness’ of the perpetrator. For instance, the judgment provides details of the women’s experiences from forced recruitment to post-liberation. While accepting that there were various methods of ‘recruitment’, including Korean collaborators,⁴⁸ the Court lays the blame on the subjugation of Koreans by the coloniser. This view features throughout the judgment, and I argue this could be to offset the possibility that the Korean state may also be partly responsible for the women’s harm. For instance, in the summary of one survivor’s testimony, the Court acknowledges that a ‘comfort station’ was run by Korean collaborators; however, it also underscores that it was the Japanese soldiers that used the ‘comfort stations’ and, therefore, that it was the soldiers alone who were the perpetrators.⁴⁹

The Court takes a more overt nationalistic perspective with regard to Japan being the sole perpetrator when examining the survivors’ postwar lives. Similarly to the Constitutional Court judgments discussed above, Seoul Central District Court acknowledges that the harm suffered by survivors went beyond World War II. For example, the Court recognises that survivors were ‘unable to get married, or even if they did get married, could not lead an amicable married life’, that their families ‘were ashamed’, and that the women ‘could not speak about their past proudly, so they kept silent’.⁵⁰ Although these brief examples do show an awareness and recognition of the continued harm that the survivors endured, the Court does not challenge or extend the ‘ideal’ victim construct while doing so. Instead, the Court turns the above into an example of the women’s loss of honour as a result of Japanese colonialism.

The Court does not recognise the role that societal and state structures play in contributing to the survivors’ marginalisation, shame and postwar silencing. Nor does it recognise that the women’s loss of dignity post-liberation also stems from their inability to meet the expectations placed upon them by entrenched sociocultural norms. Instead, by giving recognition to these norms, the Court not only places emphasis on their importance but also situates Japan as responsible for the postwar marginalisation and national silencing that the women have experienced for over fifty years.

Positioning the Korean World War II sex slave as the ‘ideal’ victim serves many purposes. First, this position serves an ideological and political purpose. The survivors’ bodies allow for South Korea as a nation to be situated as a victim. This symbolism aids in creating a national identity and collective memory that unifies a postwar state and society that has experienced national trauma. Second, and perhaps more cynically, this approach also allows the Korean state to divert attention away from the role it had in the women’s harm. Finally, this position provides the survivors with (much overdue) support at a state and societal level, and it is unsurprising that the survivors embrace and use this position to their advantage.

Overall, by challenging Japan’s official position on the issue of World War II sexual slavery and laying down steps to provide redress to the survivors, judgment 2016GaHap505092 presents a significant step forward. With the Court’s conclusions, the survivors’ once silenced voices have been heard. However, to achieve this, Seoul Central District Court has further entrenched problematic ideologies. Not only has the importance of a victim’s virginity and chastity been reinforced, but the nationalistic interpretation of the survivors’ victimhood is also further given

⁴⁷*Ibid.* s. B.

⁴⁸*Ibid.* s. B.

⁴⁹*Ibid.* s. B.

⁵⁰*Ibid.* s. B.

support, with the Court portraying World War II sexual enslavement as an ‘us’, Korea, versus ‘them’, Japan, issue. In doing so, the survivors’ voices have been restricted; they only serve the purpose of solidifying Japan as the sole perpetrator. Survivors who have previously testified to the complexity of their experiences and harm remain silenced.

Judgment 2016GaHap505092 was well received both within Korea and internationally (The Korean Council 2023). Nevertheless, Japan refused to recognise the Court’s jurisdiction and final judgment (Motegi 2021) and then–South Korean president Moon Jae-in expressed his perplexity at the judgment (Gil 2021), which paved way for the Seoul District Court to take a different stance in judgment 2016GaHap580239.

Judgment 2016GaHap580239 considered a separate claim originally brought forward by sixteen different survivors, but by the time the Court issued its judgment, only four were still alive. Similarly to the January 2021 judgment, the survivors sought damages from Japan. They argued that Japan’s immunity is incompatible with the Korean Constitution, claiming that state immunity prevents the survivors from seeking a remedy – a solution which is the women’s remaining chance to ‘restore their honour as human beings’⁵¹

Nevertheless, judgment 2016GaHap580239 does confirm the survivors’ experiences as sex slaves during World War II. In its summation, the judgment presents the survivors’ victimhood almost identically to that of 2016GaHap505092. The judgment gives prominence to the women’s age at the time of their forced recruitment, experiences of sexual and physical violence and exploitation, their silencing and postwar harm, all of which Japan is the sole perpetrator of. Although in its presentation the Court appears to support and keep visible the ‘ideal’ victim construct, overall the construct was not used by the Court to reach its decision. This suggests that there may be a move away from using the ‘ideal’.

When examining all judgments on World War II sexual slavery together, I argue that there is a need for a victim-centred solution to examine the women’s harm in all its complexity, which would allow for a more overt change to the ‘ideal’ victim construct and pave the way for providing survivors redress. Such an approach would allow for an in-depth examination of the women’s experiences beginning from their pre-war lives and forced ‘recruitment’, to their experiences in the ‘comfort station’ and the continued stigmatisation and harm post-liberation. A victim-centred approach would also allow for a full exploration of the differing forms of harm and their root causes, such as nationalistic ideologies and the role of sociocultural norms. Finally, such an approach would enable an evaluation of the Korean state and society as a contributor and indirect perpetrator to the women’s harm, setting the groundwork for more contemporaneous Korean survivors of sexual slavery to challenge the ‘ideal’ victim construct that continues to marginalise and silence them.

4.2. Sexual slavery in the *gijichon*

Whereas Court judgments on World War II sexual slavery focus on *how* to achieve redress, the *gijichon* survivors have had to prove themselves as victims who are entitled to truth and justice. Since 2014, women who worked within the *gijichon* during the 1970s have sought reparations from the Korean state for the harm they experienced (Hyun 2017). Survivors have focused on the ‘clean-up campaign’, which, as discussed in Section 2 above, involved harmful forced medical examinations and detention of any *gijichon* woman assumed to have a sexually transmitted disease (Moon 1997).

In 2014, 122 women submitted a civil claim to Seoul Central District Court. The survivors sought the same outcome as their World War II counterparts: an official apology, recognition as victims, a restoration of dignity and reparations amounting to 10 million won (Park 2014). The judgments discussed within this subsection are not publicly available outside of South Korea, and

⁵¹2016GaHap580239, s. 2.

while the cases were heavily reported, it is not stated which area of the Korean Civil Code was relied upon by the survivors. It is the court reporting of the judgments, which feature quotations from the judgments, that this section analyses. It is reasonable to assume that Articles 750 and 751 formed the basis of the *gijichon* women's claims; as aforementioned, these articles allow individuals to seek damages for physical harm caused by other individuals, institutions or the state. Seoul Central District Court returned its judgment in 2017. While initially supporting the *gijichon* women's claim for financial remedy (with regard to their forced medical examinations), the Court rejected the survivors' arguments as to the reason for the claim (Hyun 2017). Specifically, with regards to their forced and coerced recruitment, the Court concluded:

'It is impossible to conclude that the victims were in a situation where they did not begin engaging in prostitution within the area of their own free will or could not leave' (Hyun 2017).

Unlike World War II sex slaves, the experiences of *gijichon* sex slaves have mostly remained overlooked; the women are viewed as 'willing prostitutes' by both state and society (Moon 1997). The Court's comments arguably demonstrate that this view has not changed. The above quote, I argue, demonstrates the women's victimhood is based on the 'ideal', questioning whether the women made explicit efforts to resist and protect their chastity. This is also the interpretation reached by the *gijichon* women themselves, in response to the Court's conclusion, survivor Park Young-ja stated:

'They say we walked into *gijichon* on our own, but we were cheated by job-placement agencies and were held in debt to pimps [...] I was only a teenager and I had to receive at least five G.I.s every day with no day off. When I ran away, they caught and beat me, raising my debt [...]. There was no one speaking for us, and we were abandoned by the state.' (Choe 2017)

The Court's inference to the women's alleged 'free will' implies that the Court did not consider the wider context of the women's sexual enslavement. Interestingly, pre-1990, World War II sex slave survivors were also judged by the same 'ideal' victim construct that they have now overcome. World War II survivors were faced with similar assumptions: the women seen as 'willing prostitutes' who volunteered to serve the Japanese imperial army, as women and young girls who did not attempt to physically resist or maintain their virginity (Min 2021). It was only with the change in attitudes brought about by public testimonies in the 1990s that the survivors went from being viewed as 'willing prostitutes' and 'fallen' women to being recognised as victims of sexual slavery, setting a victimhood standard for all Korean sexual slavery survivors.

Although Seoul Central District Court concluded that the state's 1970s 'clean-up campaign' was harmful, the Court did not view the *gijichon* women as survivors of a state-controlled sex industry (Hyun 2017). It can be argued that the Korean state's role as a perpetrator may have contributed to the women's 'non-victim' status. The Korean state is not a recognised 'ideal' perpetrator in the same way that Japan – a foreign coloniser – is an 'ideal' perpetrator of the World War II sex slaves. Here, nationalist interpretations of the *gijichon* women's experiences are automatically applied; the women are, at most, patriots and, at least, 'fallen' women and 'willing prostitutes' (Cho 2008a). Any suggestion that the Korean state is a direct perpetrator would rock the nationalist foundations that underscore contemporary Korean identity (Soh 2008).

The *gijichon* survivors appealed to the Seoul High Court, which reached a different judgment (Kim 2018). Seoul High Court affirmed that the '[t]he state actively encouraged and justified acts of prostitution within the military camp towns through patriotic education praising prostitutes as "patriots who bring in foreign currency"' (Kim 2018), and that the state 'us[ed] STD treatment as an excuse for "suppression" [...] which basic rights were directly violated by segregation of the

camp town prostitutes in forced internment facilities or through the indiscriminate administration of penicillin, which carries serious physical side effects' (Kim 2018), due to 'concerns about setbacks in their use for purposes of national security and foreign currency acquisition, which existed as the other side of the same coin as acts of active justification and encouragement of prostitution' (Kim 2018). The High Court's conclusions were the first to explicitly declare the Korean state as a direct perpetrator of the women's harm.

Through this judgment, survivors of Korean state-initiated sexual slavery, who have long viewed both the Korean state and the US military as direct perpetrators (Vine 2015), have been able to achieve official legal recognition of the active role of the state in causing their harm. This designation can be seen as a movement away from the trope of the foreigner being the 'ideal' perpetrator and an overt rejection of the nationalist views that have helped to construct it.

The High Court's judgment also reveals a widening of the 'ideal' victim construct in other ways. The Court referred to the *gijichon* women as '*wianbu*'. Using this term situates the survivors on par with their World War II counterparts. As aforementioned, prior to the 1990s, the term *wianbu* was legally defined as 'willing prostitute'⁵² and was a shameful term. With the Seoul High Court's judgment, it can be interpreted that the 'ideal' victim construct has been expanded. Through the Court's adoption of the term *wianbu* to name the *gijichon* survivors, as well as their blunt conclusion that the Korean state is the perpetrator of the women's harm, the victimhood has widened. This may have positive implications for other silenced and marginalised Korean victims of sexual slavery, both in a wartime and peacetime context.

5. Conclusion

Within this paper, I have demonstrated how an 'ideal' victim of sexual slavery has been used within the South Korean courts. Generally, it would appear that the World War II sex slave survivors have received more support from the courts. However, despite there being a recognition of their ('ideal') victim status, Japan being designated the sole perpetrator has meant that redress through the Korean courts cannot be achieved. In contrast, for the *gijichon* women, the 'ideal' victim construct has had more of an impact. These women have faced the additional challenge of needing to prove their victim status to contest the 'ideal' victim construct. Some success has been achieved in this area, the courts recognising the direct role of the Korean state as perpetrator of their harm and – within the Seoul High Court – including the *gijichon* women within the scope of *wianbu*.

Both the 2018 Seoul High Court *gijichon* judgment and the 2019 Constitutional Court judgment on World War II sexual slavery demonstrate a positive (albeit potential) change to the 'ideal' victim construct. As discussed, the High Court judgment demonstrates that the 'ideal' victim construct can be expanded, and within the Constitutional Court judgment, the Court requested a victim-centred approach to redress, which would consider the entire context surrounding the survivors' harm. On this, World War II sex slave survivors have commented that the (Korean) public still 'laughingly [look] at them' (Min 2003, pp. 950–51). In the words of survivor Lee Ok-sun:

'If someone comes to me and asks me why I take issue with the humiliating past, slap him on the face and tell him "what if your daughter had suffered the atrocities without doing anything wrong?"' (Min 2003, pp. 950–51).

Her words are evidence that redress is more than an official apology; a change in Korean societal attitudes is also needed, something that the victim-centred approach could begin to provide.

⁵²For example, Supreme Court 66Da1635.

Ultimately, this paper has demonstrated that an ‘ideal’ victim construct is frequently used to strengthen national identity, and the Court judgments discussed above highlight how entrenched this construct is. While the ‘ideal’ victim construct has shaped sociocultural norms that affect perceptions of innocence, it also extends into the realm of nationalism. Nationalism has played a significant role in situating the Korean state and nation as victims. Nationalism surpasses the ‘ideal’ victim construct and has replaced the role of the actual survivors themselves. The issue of whether the survivors and their experiences can be shaped to support this nationalist view then decides whether they are embraced as victims. In this sense, truth and acknowledgement go beyond redress and justice: it is about memory. This is problematic. In this paper’s introduction, I noted the existence of South Korean sex slaves in both military and non-military settings. The sexual enslavement of Korean women is arguably an ongoing human rights issue, one that cannot be addressed until the state looks inwardly. Only then can the underlying patriarchal and nationalist attitudes that aid in establishing this ‘ideal’ victim construct be challenged at all levels, and victims and survivors be granted a voice and the redress that they seek.

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