What is the cause of collective action in the migrant workers’ movement in Korea? When and how did the migrant workers’ movement become militant? How is the collective action similar to and different from the militant tradition of Korean democratization? Examining political changes that have occurred over 20 years, this chapter traces the migrant workers’ movement in the context of democratic consolidation, the judicialization of politics, and the recent deterioration of democratic reality in Korean society.

The migrant issue has become a major challenge for Korean democracy with implications on a global scale. Migrant activities operate under the influence of a legacy of Korea’s past experience of democratization. The strategic focus of the migrant workers’ movement has varied according to the stages of Korean democratic consolidation. Some organizations focus on the enhancement of general human rights, while others focus on labour rights or cultural rights. In this chapter I review the characteristics of Korean democratization and the meaning of ‘militant’ as well as the limits of militancy, the internal development of the migrant workers’ movement, and the influence of government policies and the role of non-governmental organizations (NGOs).

Korean democratization has been rather more militant than concrescentive. This dynamic derived from a combination of citizens’ active participation and the role of the oppressive state. This militant democratization has resulted in a culture of collective action, especially for social minority groups, on how to secure one’s interest efficiently (Chabanet and Royall, 2009). Today, Korea has passed through these turbulent times and now its democracy has surely entered a stage of consolidation in which democracy has become the only game in town and elections have become the
main method of fair competition (Palma, 1990). In the December 2007 presidential election Korea also passed Huntington’s ‘two turn-over test’ in which a party that had lost power during the democratic transition gained power again, while the defeated ruling party agreed on a peaceful regime change (Huntington, 1991). These tests of consolidation are supported by a free and active civil society, an autonomous political society, rule of law to guarantee citizens’ freedom, a usable state bureaucracy, and an institutionalized economic society (Linz and Stepan, 1996, p. 7).

However, despite this achievement, discontent over the state of democracy remains. In particular, the nature of formal and procedural democracy, which emphasizes the rule of law with a focus on respect for public order, depreciates the positive dynamics of active political participation. The result is that Korean society has experienced a so-called judicialization of politics (Shapiro, 1994; Shapiro and Sweet, 2002; also see Hirschl, 2007; Hewison, 2010; Dressel, 2012). Thus, many items on the political agenda, such as the movement of a capital city, a presidential impeachment, and enactment of the media law, were eventually decided by the Constitutional Court. In fact, these cases were already debated and decided in the parliament or through elections, but before or after such political procedure, the cases were brought to the court by members of parliament or a group of citizens, and the court sometimes confirmed or sometimes overrode the decision of the parliament. As such, the domain of politics is being replaced more and more by the domain of law, political procedure by judicial process, and politicians by lawyers and judges under the name of the rule of law. We witness a diminution of the role of citizens as their role is minimized when important agendas are decided by legal procedures in the court instead of through a political procedure in the public sphere.

The judicialization of politics has two meanings. In a positive sense, it can guarantee the basic rights of citizens by means of written legal order. However, in a negative sense, for citizens it means a kind of frustration since it often regards citizen-initiated social movements as simply disturbing the public order. The rule of law basically respects the established legal order and can efficiently ignore those who argue against absurd practices under the current order in the name of the rule of law. During the period of the recent conservative Lee Myung-Bak government this negative aspect of judicialization of politics was clearly evident. The result was that the basic rights of citizens, such as freedoms of speech and association, were narrowed to the minimum level and poor and working-class people suffered especially from the government’s oppressive policies. Their protests were often disregarded as illegal and their voices unheard in any official decision-making procedures. Furthermore, such emphasis on a legal order accompanies a further political polarization. As the conservative government insists on a neo-liberal drive for global competitiveness, income polarization increases (Lee and Hewison, 2010; Park and Mah, 2011).