

---

---

# MAJOR LEGISLATION

Jan. — Dec., 1996

---

---

## 1. Constitutional and Administrative Law

### **An Amendment to the Eugenic Protection Law (The Protection of the Mother's Body Law).**

Promulgated on June 26, 1996. Ch. 105. Effective on September 26, 1996.

#### ***[Background of the Legislation]***

The Eugenic Protection Law was originally enacted in 1948, succeeding the National Eugenic Law of 1940, which was said to be based on the model of the equivalent Nazi law. Having the purposes of preventing the birth of inferior offspring from the eugenic viewpoint, and promoting the life and health of the mother, the Eugenic Protection Law included requirements for sterilization and artificial termination of pregnancy. The Law was expected to be a means for the control of the then-suddenly increasing population and the prevention of dangerous black-market abortions while adopting the so-called eugenic thought.

Although the Law has been criticized from various standpoints since its enactment, the amendment at this time was triggered by a handicapped persons' organization. Specifically, after the Basic Law for the Handicapped was enacted in 1993, the reexamination of the existing provisions that sustained discrimination or prejudice against mentally or physically handicapped persons was positively encouraged. Thus, first of all, the Law was criticized for promoting discrimination against the handicapped, in that it had the purpose of preventing the birth of inferior offspring. In addition, the Law's permission of sterilization or abortion on genetic grounds as discussed below was also severely criticized.

When the argument for amending the Eugenic Protection Law was made among the members of the coalition government parties, however, a wide variety of opinions was submitted concerning how the Law should be amended. At the heart of the argument were the requirements for artificial termination of pregnancy. In the Japanese legal system, abortion has generally been banned by the 1907 Penal Code, but permitted in exceptional cases if it falls under one of the following grounds provided by Article 14 of the Eugenic Protection Law: (1) if the person or his or her spouse has a psychosis, mental retardation, a psychopathy, an inherited physical disease or an inherited deformity; (2) if the person or his or her spouse has a relative by blood within the fourth degree of kinship with the above-mentioned condition; (3) where the continuation of pregnancy or childbirth may have the possibility of substantially damaging the health of the mother physically or economically; (4) where pregnancy was the result of sexual intercourse either by violence or intimidation or when the victim was unable to resist or refuse it. Among these enumerated requirements for the legalization of abortion, the third one that is based on economic grounds has been most controversial. Among less than five hundred thousand abortions per a year nowadays, most of them have been done by relying upon that economic reason. Thus, some conservative people demanded the elimination of that provision because of their abhorrence toward abortion in general. As a matter of fact, twice in the past, in 1972-73 and 1982, there were unsuccessful movements to eliminate the provision. On

the other hand, the apparent lack of a women's perspective in the present law was strongly questioned by the women's groups. Moreover, the introduction of the requirement of abortion in case of serious disorder of a fetus was insisted on by some obstetricians' organizations.

Thus, the controversy surrounding this issue appeared to need a great deal of time to settle down; however, the members of the coalition government parties decided to correct only the most problematic provisions promptly. So, after rejecting the demand for a drastic change of the Law by some women members of the Diet, they reached an agreement that the wholesale reexamination of the Law would be put on the shelf for the time being and that the amendment was limited only to the elimination of the provisions based on eugenic thought. The amendment was thus proposed as legislation by House members, and passed unanimously without any discussion at the end of the Diet session. In order to show their objection, some women members walked out of the assembly hall during the final stage of the proceedings.

### ***[Main Points of the Act]***

The title of the Law has been changed from the Eugenic Protection Law to The Protection of the Mother's Body Law.

From the purpose of the Law, the expression "to prevent the birth of inferior offspring from the eugenic viewpoint" is eliminated and therefore the Law aims only to "promote the life and health of the mother" (Article 1).

The term "an eugenic operation" is changed to "a sterilization operation" (Articles 2 and 3).

The requirements for sterilization operation stating "if the person or his or her spouse has a psychosis, mental retardation, a psychopathy, an inherited physical disease or an inherited deformity" and "if the person or his or her spouse has a relative by blood within the fourth degree of kinship with the above-mentioned condition" have been eliminated. A eugenic operation without the consent of the person or with the consent of a guardian of the person, which the Law permitted in certain circumstances, has also been eliminat-

ed. As a result, a new provision setting forth the requirements for a sterilization operation is as follows: "A doctor may perform a sterilization operation on a person who falls under one of the following grounds, in the event that the doctor is able to obtain the consent of both the person in question and his or her spouse (including a common-law spouse), if the person in question has the one, unless the person in question is a minor: (1) where pregnancy or childbirth may have the possibility of endangering the life of the mother; (2) where both already having several children and each possible childbirth may have the possibility of negatively affecting the health of the mother substantially (Article 3).

The requirements for the artificial termination of pregnancy stating "if the person or his or her spouse has a psychosis, mental retardation, a psychopathy, an inherited physical disease or an inherited deformity" and "if the person or his or her spouse has a relative by blood within the fourth degree of kinship with the above-mentioned condition" have been eliminated. As a result, a new provision setting forth the requirements for an artificial termination of pregnancy is as follows: "A doctor who is designated by the medical association established as an incorporated association in a unit of a prefecture may perform an artificial termination of pregnancy on a person whose pregnancy falls under one of the following circumstances, in the event that the doctor is able to obtain the consent of both the person in question and her spouse: (1) where the continuation of pregnancy or childbirth may have the possibility of substantially damaging the health of the mother physically or economically; (2) where pregnancy was the result of sexual intercourse either with violence or intimidation or when the victim was unable to resist or refuse it (Article 14).

### **[Comment]**

Because the Eugenic Protection Law undoubtedly had anachronistic contents, this amendment has generally been welcomed. As long as the provisions based on eugenic thought were wiped out, the amendment seems to deserve praise. However, this new law about sterilization and abortion cannot escape from further revision in the

future. In particular, as a number of women's groups have demanded, it is essential that the abortion provisions in the amendment be reexamined in light of the international understanding of reproductive health and reproductive rights. Thus, from this viewpoint, several proposals have been made, particularly concerning the revision of the present system of abortion. It may be useful to survey a few of their views very briefly here.

First, it has strongly been pointed out that the present system of abortion, that is, making a crime of abortion in principle in the Penal Code and permission for abortion as an exception under special law should be changed. According to this view, the artificial termination of pregnancy should be defined as women's right of self-determination, and criminal penalties for abortion should be abolished except in the case of an abortion without the consent of the pregnant woman. Thus, it has been argued that the women's right of self-determination should be central to establishing a new system of abortion law and that abortion should not be subject to variable justifications that the nation can change to meet demands of the times. Of course this proposal of an abortion-on-demand model based on women's right of self-determination has to solve such a difficult question as the one based on the so-called right to life of the unborn. However, it has been maintained that this model is more appropriate than the abortion-for-cause model.

Second, from the viewpoint of women's right of self-determination, it is problematic that the amendment still has a requirement of spousal consent to abortion. If a pregnant woman has a right to decide whether or not to terminate her pregnancy, the law which gives a husband veto power over abortion should be considered repugnant to that right.

Third, under the present system, the period during which an artificial termination of pregnancy can be permitted is fixed by the notice of the Permanent Vice-Minister of Health and Welfare. In 1990, the notice lowered the period from a full twenty four weeks of pregnancy to a full twenty two weeks of pregnancy because of technological developments. There have been strong objections to the shortening of the period for permitting an abortion since it will have

a great effect particularly on young unmarried women. In addition, the system by which the Permanent Vice-Minister of Health and Welfare may have such authority without any legal basis has also been rigorously criticized. In this respect also lack of a viewpoint of women's right of self-determination has been pointed out.

Finally, it has earnestly been demanded that social arrangements for respecting women's right of self-determination in the context of reproduction should be established. In order that reproductive decisions can be fully guaranteed, social and economic conditions such as educational, medical and social services should be affirmatively ensured. This total change in social arrangements related to reproductive decisions may include the prevalence of sex education, reconsideration of the relationship between men and women, the realization of the social circumstances in which the person who wants to have a child can do so more easily or the handicapped can live more comfortably, and so on. In this sense, it is expected that this amendment of the Eugenic Protection Law will not be final but the starting point for designing much broader visions of reproductive freedom.

**Prof. KENJI URATA**

**Assoc. Prof. (Aichi University of Education)**

**SATOSHI KOTAKE**

## **2. Labor Law**

### **The Revisions of the Law for Securing the Proper Operation of Worker Dispatching Undertakings and Improved Working Conditions for Dispatched Workers, etc.**

Promulgated on June 19, 1996. Ch. 90. Effective as of December 16, 1996.

#### ***[Background]***

In the past, because of the general prohibition of worker-supply enterprises, the employment of extra-company workers who were