

## THE ABORTION LAW OF JAPAN

In Japan, abortion in theory is punishable under the Penal Code of 1907. 1/ Article 212 of the Code provides:

When a pregnant woman causes a miscarriage by the use of drugs or other means, imprisonment at forced labor for not more than one year shall be imposed.

Any person who, at the request of a woman or with her consent, causes her miscarriage, shall be punished with imprisonment at forced labor for not more than two years. If the death or injury of the woman is thereby occasioned, he shall be punished with imprisonment at forced labor for not less than three months nor more than five years (article 213). For a doctor, midwife, pharmacist, or druggist who, at the request of a woman or with her consent, effects her miscarriage, imprisonment at forced labor for not less than three months nor more than five years shall be imposed; and if the woman is thereby killed or injured, imprisonment at forced labor for not less than six months nor more than seven years shall be imposed (article 214).

Exceptions to the Penal Code, however, were made in the Eugenic Protection Law of 1948, which legalized abortion within broad limits. 2/ Article 14 of the Law states:

1. The physician designated by the Medical Association, which is a corporate juridical body established with the prefectural district as the unit (hereinafter called 'designated physician') may carry out the artificial interruption of pregnancy, at his discretion, in the case of a person who falls into any one of the following categories with the consent of the person in question and the spouse:

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1/ Law No. 45, Apr. 24, 1907, as last amended by Law No. 30, Apr. 30, 1980.

2/ Law No. 156, July 13, 1948, as last amended by Law No. 72, June 25, 1985.

(a) A person who suffers or whose spouse suffers from psychosis, mental deficiency, psychopathy, hereditary physical disease or hereditary deformity;

(b) A person who has, or whose spouse has, a relative of the blood within the fourth degree of consanguinity who suffers from hereditary psychosis, hereditary mental deficiency, hereditary psychopathy, hereditary physical disease or hereditary deformity;

(c) A person who or whose spouse is suffering from leprosy;

(d) A mother whose health may be affected seriously by the continuation of pregnancy or by delivery, from the physical or economic point of view;

(e) A person who has conceived as a result of an act of violence or intimidation or while unable to resist or refuse.

2. In the case of the consent mentioned in the preceding paragraph, the sole consent of the person in question shall be sufficient if the spouse cannot be located, or fails to declare his intentions, or has died after conception has occurred.

3. [Omitted.]

Under the Law of 1948, the designated physician originally was required to apply to a local Eugenic Protection Committee for official authorization to perform an abortion. Since the revision of the Law in 1952, this procedure has become unnecessary. Today, it is entirely up to a single physician to decide whether or not a proposed abortion may be legally performed under the Eugenic Protection Law.

Perhaps the most important revision of the Law was that of 1949, which recognized economic considerations as a factor legally justifying induced abortion. Thus, at present an abortion may be performed on a mother "whose health may be affected seriously by the continuation of the pregnancy

or by delivery, from the physical or economic point of view." In applying the above provision, a physician cannot demand information which would put him in a position to make an accurate assessment of the economic circumstances of the patient; all he can do is to accept whatever statement she may give about her circumstances. Due to this situation, the law has been broadly interpreted. In practice, many wealthy and healthy women have obtained abortions. Most abortions have been performed on economic grounds. <sup>3/</sup>

The Law requires that every physician who performs an abortion make a report to the competent government authority. Such reports submitted monthly must indicate the grounds for each operation (article 25).

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<sup>3/</sup> Population and Law 16-17 (L. Lee & A. Larson ed 1971).

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