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A Study on Crime of Abortion

— In the Light of Comparative Law and Based on Statistical Data —

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1. The present study looks briefly at the recent general trends in laws against crime of abortion in Japan and overseas countries as well, examines the changes that have taken place in Japan since the end of the World War II in the exercise of punitive power against such a crime and the actual conditions of criminality of abortion in terms of criminal statistics, and thereby seeks to obtain adequate material relevant to the fair application of punitive power to this crime of abortion which always poses a very difficult problem for law enforcement and to the study of various other questions relating to abortion.

2. Abortion is basically prohibited in Japan by the Penal Code with the exception of an artificial interruption of pregnancy performed under certain conditions prescribed by the Eugenic Protection Law. The Penal Code contains the following provisions for crime abortion (Chapter 29, Part II, Penal Code):

- 1) Crime of self-induced abortion (Art. 212).
- 2) Crime of abortion with consent (Art. 213).
- 3) Crime of abortion through professional conduct (Art. 214).
- 4) Crime of abortion without consent (Art. 215 and 216).

The Eugenic Protection Law (enforced in 1948) permits an artificial interruption of pregnancy if it is performed on eugenic grounds, leprous grounds, medical grounds or socio-medical grounds and ethical grounds. A draft amendment to the Eugenic Protection Law proposing a number of revisions with respect to the grounds, particularly, the socio-medical grounds for permitting abortion has been presented to the Diet time and again since 1972, but this draft amendment has eventually failed to pass the legislature.

The Legislative Council, after nearly 11 years of deliberations on revision of the Penal Code at the request of the Minister of Justice, reached the conclusion that the Penal Code needed to be fully revised, and on 29 May, 1974, presented the "Draft Revision of the Penal Code" comprising 57 chapters with 369 articles to the Minister. Provisions of the Draft Revision of the Penal Code relating to abortion are almost same as the existing ones except that the one relating to abortion through professional conduct is deleted and in its place a new provision of abortion for gain is introduced,

and that a fine is to be included as an additional statutory punishment for the crime of self-induced abortion.

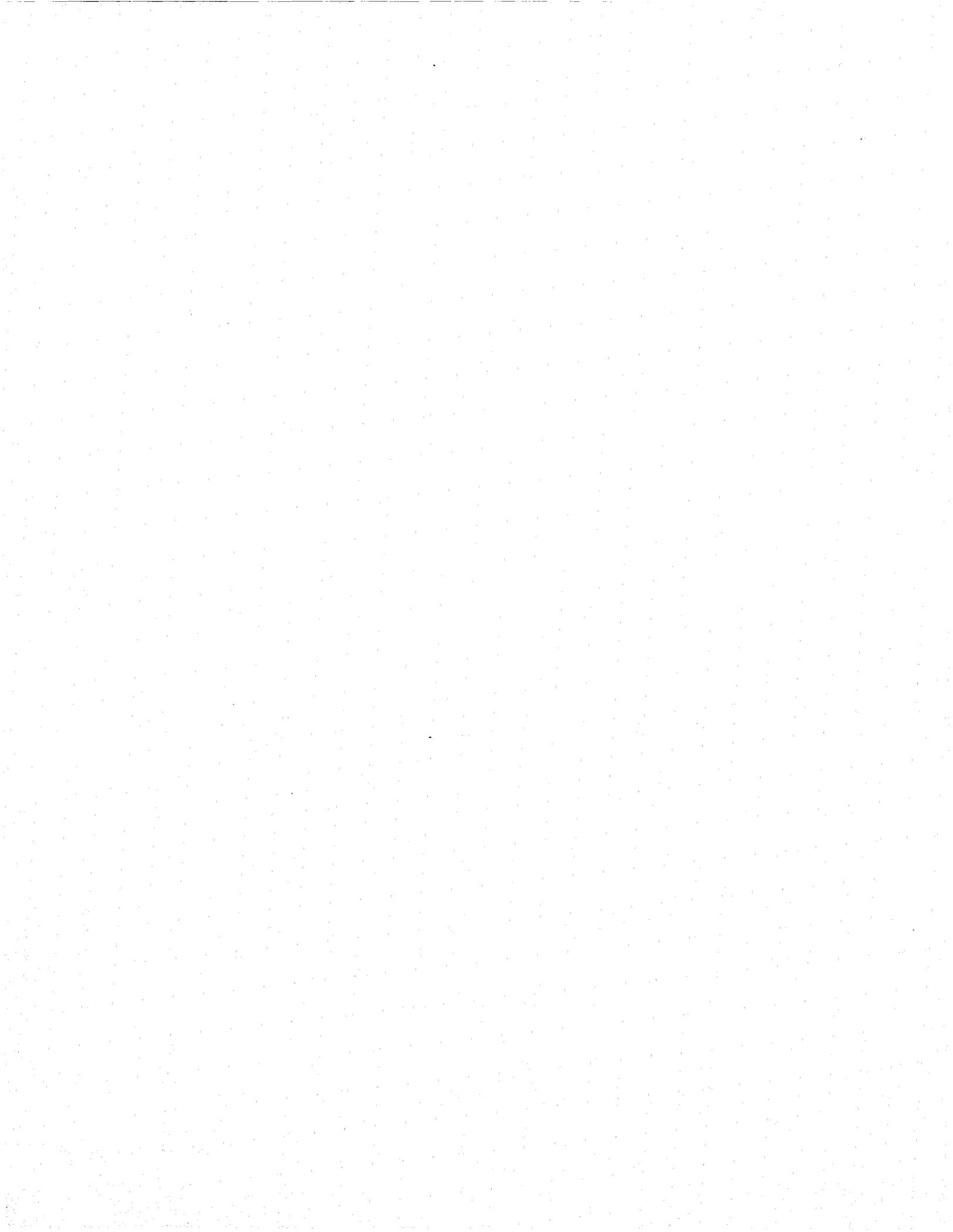
3. Very remarkable changes are seen in laws against crime of abortion in overseas countries; a law recently enacted in a certain country provides that an act of artificial termination of pregnancy performed within a certain period of initial stage of pregnancy is not a punishable crime, whether or not there are justifiable grounds for it. Again, a number of cases of amendments to the provisions of abortion have been reported under way from 1973 to 1974 in such countries as West Germany, Sweden and Denmark. The amendments are all in the direction of liberalization of artificial interruption of pregnancy within 3 months (or 12 weeks) of pregnancy regardless of whether or not there are justifiable grounds for it. In the United Kingdom, Abortion Act, 1967, is now being examined by the Committee on the Working of the Abortion Act; while in the USA, in January 1973, the Supreme Court ruled that the decision and the operation for abortion within 3 months of pregnancy should be left to discretion of the physician in charge, thereby making provisions of both States of Texas and Georgia relating to abortion unconstitutional.

Summarized above are actual conditions of laws and regulations relating to abortion in overseas countries.

4. In Japan, the Eugenic Protection Law was enforced in 1948. According to the statistical data on the number of artificial interruptions of pregnancy registered under the Eugenic Protection Law, the rate of such interruptions of pregnancy per 100 births and that of those performed for reasons of mother's health to the total number of such interruptions of pregnancy, the interruptions of pregnancy registered under the Law were 246,104 in 1949, and continued to increase very rapidly until 1955 when they reached 1,170,000; after that they were generally on the decrease until they came down to 732,653 in 1972. The rate of interruptions of pregnancy per 100 births was 9.1 in 1949, and increased year by year till it reached the peak of 71.6 in 1957; after that it showed a downward trend, reaching 35.9 in 1972. In passing, 99 percent of such interruptions of pregnancy was for reasons of mother's health.

5. Criminal statistics relating to prosecutions and suspension of prosecutions for crime of abortion showed that the number of offenders received by the public prosecutors' offices for crime of abortion, after showing the highest figure of 930 in 1948, was continually on the decrease with the annual average figure being less than 100 from 1954 downwards, and the latest available figure was less than 10, and the number is still declining. The annual rate of prosecutions in the number received by the public prosecutors' offices for crime of abortion was more than 10 percent during the two years from 1946 to 1948, and after 1949 it continued to decrease with the result that the total number of such offenders including both those prosecuted and those

whose prosecutions being susended dropped down to less than 100 since 1954 downwards. Thus, the remarkable changes observed in the rate of prosecutions for crime of abortion is quite noteworthy. There are very few cases of prosecution for crime of self-induced abortion nowadays, though we still have some cases of prosecution for crime of abortion with consent and for abortion for professional conduct. There tend to be more prosecutions in the case of such abortions resulting in death or injury of the woman involved than in the cases otherwise.



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