

THE COMPARATIVE ANALYSIS OF THE ABORTION RIGHTS IN JAPAN AND POLAND

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Abstract:

What happened with the abortion rights in comparative analysis between Japan and Poland? It seems that unlike Japan, Poland is a country with one of the most restrictive anti-abortion rights. In the case of Japan, abortion became legal in 1948; in Poland, the anti-abortion right from 1993 was considered as a “compromise” between different groups, as permitted an abortion in limited circumstances. Although substantial changes toward the liberalization of the abortion law, Japan still faces challenges for the women rights as well as in the case of Poland. A comparative approach will contribute to better understanding of complex socio-historical backgrounds of abortion rights in two different societies. This will help to address more suitable public policies towards women’s rights.

Keywords:

Abortion, women’s rights, social transformation, Japan, Poland

Analiza porównawcza praw aborcyjnych w Japonii i Polsce

Streszczenie:

Co się stało z prawami aborcyjnymi w analizie porównawczej między Japonią a Polską? Wydaje się, że w przeciwieństwie do Japonii, Polska jest krajem o jednym z najbardziej restrykcyjnych praw antyaborcyjnych. W przypadku Japonii aborcja stała się legalna w 1948 roku; w Polsce prawo antyaborcyjne z 1993 roku było uważane za „kompromis” między różnymi grupami, ponieważ zezwalało na aborcję w ograniczonych okolicznościach. Pomimo znaczących zmian w kierunku liberalizacji prawa aborcyjnego, Japonia nadal stoi przed wyzwaniami związanymi z prawami kobiet, podobnie jak w przypadku Polski. Podejście porównawcze przyczyni się do lepszego zrozumienia złożonych społeczno-historycznych uwarunkowań praw aborcyjnych w dwóch różnych społeczeństwach. Pomoże to w opracowaniu bardziej odpowiedniej polityki publicznej w zakresie praw kobiet.

Słowa kluczowe:

Aborcja, prawa kobiet, transformacja społeczna, Japonia, Polska

INTRODUCTION

Japan and Poland have different experiences regarding abortion rights. What happened with the abortion rights in comparative analysis between Japan and Poland?

The comparison between Japan and Poland will contribute to mutual understanding of women's emancipation and women's rights for legal abortion. In Poland, after the Second World War a socialist regime was imposed under the Soviet Union's political, economic and social influence. With the democratic transformation from the 1990s, women paradoxically have not gained the sexual and reproductive rights, including the right for pregnancy termination. Different from the case of Poland, postwar Japan experienced profound social transformations toward democracy under Allied Occupation, primarily led by the United States. This occupation involved extensive reforms, including women's emancipation through the suffrage, supporting labor unions, liberalizing the education system, eliminating secret prosecutions, democratizing the economy, and finally legalizing abortion.

Although substantial changes toward the liberalization of the abortion law, Japan still faces challenges for the women rights as well as in the case of Poland.

THE ABORTION IN JAPAN

Postwar reforms, articulated by General Douglas MacArthur to Japan's Prime Minister, became known as the "Five Major Reform Directives". It is worth noting that women's emancipation was listed at the top of these directives. Although the women's suffrage movement had been active in Japan during the 1920s, it was only implemented following MacArthur's directives, hence it is often referred to as "MacArthur's gift".

However, in examining the occupation policy during the 1946 general election, which resulted in the highest number of female legislators up to 2021, Miyako Okahara (2007) points out that women's suffrage was not intended to transcend its role as a mere indicator of "democratization" or to elevate the social status of women. Instead, the concept of "women's emancipation" functioned more as a symbolic measure—a barometer of the perceived success of the occupation policy—rather than reflecting substantive change in reality. To symbolize this, the legalization of abortion was not achieved as women's emancipation, nor was it supported by the Allied occupation.

In Japan, abortion was partially legalized in 1948 through the enactment of the *Yusei Hogo Ho* or the Eugenic Protection Law, which stands as one of the world's first laws to legalize abortion. Nonetheless, it is crucial to acknowledge that the primary intent behind this legislation was not to advance women's reproductive rights. Instead, the law was conceived as a remedy to Japan's burgeoning overpopulation crisis in the aftermath of World War II. The country faced a surge

in population due to the return of over four million repatriates and the mass discharge of Japanese soldiers, leading to a significant postwar baby boom. During deliberations in the Diet, some advocates of the law even proposed compulsory sterilization as a measure to prevent the rapid population growth (Toyoda, 2015).

With the introduction of the Eugenic Protection Law, there was a noticeable decline in the birth rate, concomitant with a rise in the number of abortions. The law underwent several amendments within just five years of its enactment, progressively liberalizing abortion regulations. For instance, the 1949 amendment broadened the conditions under which abortion could be sought, incorporating an “economic clause” that permitted abortion for economic reasons. The 1952 amendment further streamlined the abortion process, nearing complete liberalization. Consequently, as Yoshio Koya, then Director of Japan’s National Institute of Public Health, remarked, abortion increasingly became utilized as an alternative to birth control (Koya and Muramatsu, 1955).

Furthermore, abortion remains classified as a criminal offense under Japan’s Criminal Code, which was established in 1880. Although the Eugenic Protection Law was renamed the Maternal Protection Law in 1996, eliminating its eugenic provisions, the criminalization of abortion persisted. Despite this renaming and the law’s amendments, the underlying criminal offense against abortion remains enforceable to this day. The Maternal Protection Law permits abortion solely under specific exceptions to this criminal framework, and mandates spousal consent, thereby significantly limiting the recognition of women’s rights in reproductive decisions.

Thus, the legalization of abortion in Japan was not primarily aimed at securing reproductive rights for women. The very name of the law that facilitated abortion—the “Eugenic” Protection Law—underscores that the legislation was not intended to champion women’s reproductive rights. Initially, abortion was legalized for eugenic reasons, focusing on the concept of quality control rather than individual rights. The Eugenic Protection Law explicitly enumerated eugenic criteria as grounds for abortion, reflecting its primary goal of legalizing sterilization for eugenic purposes. The provision for abortion can therefore be regarded as a secondary outcome of this primary objective.

In practice, even the National Eugenic Protection Law of 1940, the wartime predecessor of the Eugenic Protection Law, permitted abortion under specific conditions. For example, Article 16 required that an abortion could only proceed after obtaining the opinion of another physician and notifying the relevant government agency. Although this regulation was generally interpreted as prohibiting

abortion during wartime, exceptions were acknowledged, specifically in cases where “urgent treatment is required”.

In reality, following Japan’s postwar repatriation from its former empire starting in 1946, abortions were conducted for Japanese women pregnant with interracial children, often the result of assaults presumably by Soviet soldiers or others. These abortions took place at clinics in various Japanese ports receiving repatriates. This practice was termed “extrajudicial measures” and was facilitated by directives from the Welfare Ministry, which allowed for a broad interpretation of the provision concerning “urgent treatment” in the National Eugenics Law (Welfare Ministry, 1946).

It is evident that Japan, which had an intensely pro-natalist policy during wartime, did not immediately shift to a policy that recognized women’s reproductive rights merely because of its war defeat. The government’s approach remained deeply rooted in its prior eugenic and nationalism priorities.

Similarly, the legalization of abortion in Japan was significantly influenced by the context in which the Eugenic Protection Law was formulated and enacted—namely, during the Allied Occupation of Japan. During this period, Japan saw an unprecedented presence of Allied soldiers of various racial backgrounds, leading to a societal reaction characterized by a “panic over biracial children” (Kovner, 2012). This anxiety, centered on the notion of “protecting the purity of the race”, played a pivotal role in the establishment of the Eugenic Protection Law. The law reflected the pervasive concerns about racial purity and demographic control that were prevalent during the occupation, mirroring similar eugenic ideologies that sought to manage and influence the nation’s racial composition.

Nevertheless, as previously noted, abortion became a mechanism for population control through various revisions of the Eugenic Protection Law. Essentially, the law was employed as a tool to regulate birth rates and manage population numbers. According to the Welfare Ministry’s Statistics Report, the number of abortions peaked at over 1,170,000 annually in 1955. Although this number gradually declined thereafter, it remained significantly high, with approximately 840,000 abortions reported annually in 1965 (IPSS, 2005).

Around 1962, the Welfare Ministry, concerned about the persistently high number of abortions, began considering revisions to the Eugenic Protection Law to impose stricter limitations. This consideration was driven by several factors. First, the religious organization *Seicho-no-Ie* (House of Growth), known for its commitment to protecting the dignity of fetal life, strongly opposed abortion. Second, governmental bodies such as the Population Problem Council, the Welfare Ministry, and the Japan Federation of Economic Organizations emphasized the

need for population growth, advocating for the removal of the “economic clause” that allowed abortions. On the other hand, the Japan Planned Parenthood Federation, the Japan Medical Association, and other groups sought to expand abortion conditions by introducing a “fetal clause” to address cases of fetal disorders.

In response to these varying positions, an amendment bill to the Eugenic Protection Law was submitted to the Diet in May 1972. The proposed changes included the deletion of the “economic reasons” provision and the addition of a “fetal clause”, which permitted abortions in cases of fetal abnormalities.

Reactions from women were swift and vehemently opposed to the proposed “anti-abortion law”, leading to a nationwide campaign to prevent the amendments to the Eugenic Protection Law. Despite multiple submissions of the amendment bills to the Diet, the women’s movement successfully pushed for the bills to be withdrawn from consideration. Concurrently, groups representing people with disabilities, particularly those with cerebral palsy, also opposed the amendment. They argued that permitting abortions for fetuses with disorders would effectively endorse discrimination against individuals with disabilities.

Although these groups shared a common goal with women in resisting the government’s proposed changes, they criticized women’s focus on reproductive rights by questioning whether the right to decide included the option to abort a child with a disability. They contended that women’s advocacy often lacked consideration of its implications for people with disabilities, accusing women of failing to acknowledge their own role in perpetuating discrimination and oppression against disabled individuals (Toyoda, 2012: 232-234).

In response to the concerns raised by disability groups, some women’s organizations embraced the slogan: “We want a society where everyone can and wants to give birth to any child”. This slogan addressed the complex tension between the perception of abortion as “baby-killing” and the advocacy for both “freedom not to give birth” and “freedom to give birth”. It underscored a call for a social framework where individuals could freely choose to have children without fear or discrimination (Toyoda, 2012: 234-235).

Tomoko Yonezu, who has a lower limb impairment, reflected on the issue by posing the question: “Can I give birth to a child with disabilities while living in a society that does not accommodate disabled individuals?” Her answer was poignant: “I want to be able to give birth. But I can’t right now”. Yonezu clarified that her inability to consider giving birth was not due to a lack of personal strength, but rather the social conditions that would make it untenable. She argued that no woman, whether disabled or not, can bear the weight of raising a child in a society that fails to support the lives of individuals with impairments (Tatakau-onna, 1972).

In essence, for a woman to genuinely “decide whether or not to give birth”, society must ensure that all children, regardless of their disabilities, have the opportunity to live. This vision aligns precisely with the slogan: “A society where everyone can and wants to give birth to any child”.

The law faced a second round of proposed amendments in 1982, but survived for approximately fifty more years before being abolished in 1996. It was replaced by the current Maternal Protection Law, which removed all eugenic provisions. And what remained were the abortion-related aspects of the Eugenic Protection Law.

However, achieving “a society where everyone can and wants to give birth to any child” remains a distant goal. In Japan, where “fetal clauses” are absent, women must often decide whether to carry a pregnancy to term for “economic reasons”, especially after prenatal genetic testing reveals a high risk of chromosomal abnormalities. Since the introduction of noninvasive prenatal testing (NIPT) in 2013, the rate of pregnant women opting for this test has steadily increased. Approximately 20% of pregnant women over the age of 35 now undergo this testing, with more than 90% of those who receive a positive result opting for an abortion (Mainichi Japan, 2021).

This high abortion rate raises questions about the extent to which women are making these decisions freely. Despite efforts by organizations such as the Japan Down Syndrome Society to advocate for the value and inclusion of individuals with Down syndrome, such individuals remain stigmatized. In a society that systematically marginalizes people with disabilities, the range of choices available to women may appear predetermined. Although women in Japan ostensibly have the right to choose, prevailing social attitudes and inadequate supportive infrastructure may severely limit their options, often making abortion the perceived necessity rather than a truly autonomous choice.

Even today, abortion remains criminalized in Japan, and the Maternal Protection Law requires women to obtain spousal consent before undergoing the procedure. This legal stipulation, coupled with the criminalization of abortion, has led to several tragic incidents. For instance, in 2021, it was reported that a 20-year-old student, unable to secure her partner’s consent and subsequently denied abortion services by multiple clinics, was forced to give birth alone in a public restroom in a park. She abandoned the newborn’s body in the park and was subsequently arrested and convicted of offenses including abandonment leading to death. This case underscores the severe consequences of restrictive abortion laws and the challenges faced by women under the current legal framework (Benoza, 2023).

These examples illustrate that sexual and reproductive health and rights in Japan are still not fully guaranteed. While it is commonly believed that a woman

exercising her right to abortion is making a personal choice, the reality is more complex. Women cannot make truly free choices if society does not ensure their support and security after giving birth, including the ability to raise their child in a manner that aligns with their wishes. Without comprehensive support systems and protections, women may face severe constraints that undermine their rights and amplify the difficulties related to reproductive choices.

THE ABORTION IN POLAND

At the beginning of twentieth century no legal abortion act was passed, perhaps due to Poland's complex history. This central eastern country regained independence after the First World War in 1918, lasting till 1939. Democracy in Poland lasted only three decades in total in the twentieth century. Interestingly, women's rights in general were recognized. The decree on the electoral law to the Legislative Deputy Chamber (Sejm) of 28 November 1918, a few weeks after Poland regained independence, allowed women for the first time to participate in elections. Thus, Polish women gained full electoral rights as one of the first in the world. A year later, during the first elections eight women were elected to the Sejm (Duch, 2020). However, the short period of building a new state was stopped with the Second World War (1939-1945).

After the Second World War, Poland was found in the Soviet Union's sphere of influence. There are significant differences between western/occidental countries and the Soviet Union. After the Second World War – wrote Ágnes Heller – the emancipation of women happened as an effect of the 1968 cultural revolution in predominantly western countries. For Heller, “democracy become transformed into mass democracy with a hint of populism. There is no unchecked institutional authority anymore, at least not in democratic countries” (Heller, 2011: 164). According to Heller, sexual relations are doomed to be relations of inequality (Heller, 1994), in a capitalist mode of production (best represented in French social science discourse on *rapports sociaux de sexe*). The sexual revolution of 1968 brought radical social changes in Western Europe: “We all know that young couples without a marriage can now live in the same apartment, without shame. We can now dress informally even for the theatre. All professions are open to women, business and politics included” (Heller, 2011: 164).

In contrast, Poland as other socialist countries was conservative. Later, starting from the 1960s, abortion was performed upon request and free of charge in hospitals. The country provided the right to termination of pregnancy for women.

In the communist regime under the Soviet Union, imposed shortly after 1945, the catholic church enjoyed much more freedom than other countries. From the early eighties the communist system started to collapse. The end of communism by 1990 assumes one of the three forms: “1) an implosion, 2) a symbolic turning-point putting major emphasis on a change in identity, or 3) a discrete change in the significance of institutions and in their mutual relations through a refashioning of their context” (Staniszki, 1999: 62). This allows to understand the role of populism in contemporary politics. Starting from the eighties the new democratic movement (*Solidarity*) means an opening the democracy and the significant role of the public space for rule of law.

Officially, on 4 June 1989 the first democratic free election to the lower chamber was organized as a result of Round Table’s discussion in which communist and democratic elites managed to have an agreement on peaceful transformation. Almost four years later the first law on abortion was passed. The new law, signed by president Lech Wałęsa on 7 January 1993 showed a “compromise” between conservative and less conservative society groups. Access to abortion was restricted, as the Catholic Church had an influence on policy makers. The abortion was legal only under 4 exceptions, according to Art. 7: “1) the pregnancy constitutes a threat to the life or a serious threat to the health of the mother, confirmed by the judgment of two doctors (...), 2) the death of the unborn child occurred as a result of actions taken to save the life of the mother or to prevent serious damage to the health of the mother, the danger of which was confirmed by the judgment of two other doctors, 3) prenatal tests, confirmed by the opinion of two physicians other than the physician conducting the procedure, indicating serious and irreversible damage to the fetus, 4) there is a justified suspicion, confirmed by a prosecutor, that the pregnancy happened as a result of prohibited conduct” (Act on family planning, 1993a). Rak and Skrzypek (2023) observe that women were marginalized from 1989 to 2007, because of the strong alliance of ruling elites, the Catholic Church and state-controlled media. The Act on family planning was adopted despite massive demand from the women’s organizations to carry out a referendum on abortion. Instead of a referendum, the parliament adopted the Act on Family Planning, called a “compromise” in 1993. Moreover, following pressure from the Catholic church, contraception, which was formerly legalized and accessible, was banned and made available only on demand.

The Act on Family Planning of 07.01.1993 was passed almost four years after democratic independence in 1898 and was considered as an agreement in a strongly divided society among more progressive and more conservative one. It was clear that after the collapse of communism in 1989 there was no time and place

for an “ideological war” on abortion. The objectives were different; they included policies aiming to rebuild a rule of law and liberal economy.

The Act on Family Planning was amended by introducing new Art. 4a under which four conditions were introduced in 1996, among them “difficult living condition”: “Art. 4a. 1. A termination of pregnancy may only be performed by a physician when: 1) the pregnancy poses a threat to the life or health of the pregnant woman, 2) prenatal tests or other medical indications indicate a high probability of severe and irreversible impairment of the fetus or an incurable disease that threatens its life, 3) there is a reasonable suspicion that the pregnancy resulted from a prohibited act, 4) the pregnant woman is in difficult living conditions or a difficult personal situation” (Act on family planning, 1993b). However, the ruling of the Constitutional Court of 28 May 1997 changed the 1996 law’s amendment and abolished the “difficult living condition” premise. From that time, abortion was legal only under three conditions: 1) the pregnancy posed a threat to the life of the woman, 2) when “severe and irreversible damage to the fetus” occurred, and 3) the pregnancy resulted from a forbidden act.

Currently Poland is a country with one of the most restrictive anti-abortion laws. The populist center-right government (in power 2015–2023) desired to change a 1997 compromise and new judgment of the Constitutional Court of 22 October 2020 established an even more restrictive anti-abortion law that triggered open protests and society’s disagreements. According to the law of 7.01.1993 (last amendment in 2020) on “family planning, protection of the human fetus and conditions for the admissibility of termination of pregnancy” there are only two conditions for abortion. These two conditions were established recently based on the ruling of the Constitutional Court of 22 October 2020: “Article 4a. 1. Termination of pregnancy may only be performed by a physician, when: 1) the pregnancy poses a threat to the life or health of the pregnant woman, 2) *lost power (from 2020)*, 3) there is a reasonable suspicion that the pregnancy resulted from a forbidden act, 4) *lost power (from 1997)*” (Act on family planning, 1993c).

A spiral of conflict between open society and authority was triggered after 2015, when a new populist right center government of the Law and Justice party started and ideological – conservative one – revolution. The amendment of law from 2020 significantly diminished women’s rights for abortion and put women’s health as shown in the case of Joanna. Controversy law was passed during the pandemic COVID-19, however it has not prevented the massive strike of civil society in Poland.

In September 2021, a 30-year-old patient, 22 weeks pregnant woman died in a hospital in Pszczyna. The cause of death was septic shock (Krupa-Dabrowska,

2021). Another case of Joanna frustrated public opinion in July 2023. Joanna took an anti-abortion pill, phoned her psychiatrist, who then asked for the police to come to the hospital. She said after: “I was told to undress and do sit-up”. Taking an abortion pill by Joanna was supposed to be the reason for the police intervention in this hospital. The woman admitted to the doctor that she wanted to end her pregnancy by taking a pill and that her physical and mental health deteriorated. The police allegedly ordered the woman to undress and exercise and demanded that she hand over her phone and laptop. Finally, Joanna was transported by the police to another hospital. She was told to undress, do squats. She felt being violated of her right for privacy and dignity (Szczerbiak, 2023). Four policemen were guarding her and accused her of abortion. The court ordered the police to return the phone taken from the woman, emphasizing that Mrs. Joanna was not suspicious and “there was no prospect of presenting her allegations”.

The political situation changed after the 2023 parliamentary elections. The new government was formed as a coalition of three progressive parties: the Civic Platform, the Left and the Third Way party. As a result the new projects on abortion – in total four – have been sent to the Deputy Chamber in 2024. Three parties from the coalition that governs in Poland since October 2023 proposed four projects on abortion: two projects from the Left, one from the Civic Platform and the last one from the Third Way party.

Already in November 2023, the Left Parliamentary Club submitted two projects to the *Sejm*. The goal of the first project was to decriminalize abortion. The amendment assumes the repeal of paragraphs 1 and 2 of Art. 152 of the Penal Code. The first paragraph concerns the penalty for performing an abortion with the woman’s consent, the second refers to providing assistance in abortion and inducing it. The second project is called the act on safe termination of pregnancy. It includes a provision on abortion available up to the 12th week of pregnancy without giving any reason. However, after the 12th week, termination of pregnancy will be possible if (1) the pregnancy poses a threat to the life or health of the pregnant person (without time limits), (2) there are developmental or genetic abnormalities of the fetus (until the end of the 24th week of pregnancy and later, if the abnormalities detected in the fetus prevent the fetus from later being able to live outside the body of the pregnant person) or (3) the pregnancy was the result of a prohibited act (until the end of the 24th week of pregnancy, based on the prosecutor’s decision, which must be made within 7 days of submitting the application).

The Civic Platform’s project stipulates that abortion is available on request up to the 12th week and later in 3 cases: (1) when the pregnancy poses a threat to the life or health of the pregnant person (without time limits), (2) when there

are developmental or genetic abnormalities of the fetus (until the end of the 24th week pregnancy, as well as later, if a disease or defect diagnosed in the fetus makes it impossible to live independently and there is no possibility of curing it) or (3) when the pregnancy is the result of a prohibited act (up to the 18th week of pregnancy, based on the statement of the pregnant person - under penalty of liability criminal penalty for making false statements).

The last project, from the Third Way party, the most conservative one, restores the possibility of performing an abortion when the results will indicate a high probability of severe and irreversible defects of the fetus or an incurable disease that threatens its life. Termination of pregnancy in this case would be possible until the fetus is able to live independently outside the body of the pregnant woman. This project restores the consensus that lasts until 2020. In conclusion, the sexual and reproductive rights are not guaranteed at all in Poland. Recently, the UN Committee on the Elimination of Discrimination against Women (CEDAW) found that Poland violated women's rights by restricting access to abortion: "Poland's abortion laws and practice subject women to a gender-based stereotype according to which the primary role of women is reproductive and maternal, constitutes discrimination and violates both their freedom of self-determination and their right to gender equality, in violation of article 5 of the Convention" (CEDAW, 2024: 19).

CONCLUSION

Japan and Poland developed different abortion rights after the Second World War. In Japan, despite a long way toward the implementation of women's reproductive and sexual rights, including rights for termination of pregnancy, there are still challenges that face state and welfare state policies. Japan as a country with the first laws to legalize abortion does not have sufficient policy to address social needs in an unequal society.

In Poland, the situation is different one comparing with Japanese case. After Poland regained democracy in 1989 post-communist mentality was preserved by conservative populism of the Law and Justice party (in power 2015-2023). The cultural revolution against women's rights was developed in the framework of conservative and nationalist ideas that promote national unity in postpandemic COVID19 reality. The center-right government desired to change compromise and new judgment of the Constitutional Court from 22 October 2020 established more restrictive anti-abortion law what triggered open protests and society disagreement. The new progressive government formed in October 2023 presented

four projects to make abortion possible or to diminish the effects of the restrictive anti-abortion law. Political necessities are shaped differently in different societies. However, both countries, despite their legal differences need strong public policy to shape women's needs in more globalized societies.

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