Misguided Maternal Protection Law

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The Maternal Protection Law has been in force in Japan since June 1996. Some of you may have seen a sign with the words “Authorized by the Maternal Protection Law” at the entrance to or in an advertisement for an obstetrics-and-gynecology clinic. One may get an impression that the law is intended to protect maternal health, pregnant women, and the mother’s body. However, the actual content of the law is quite different from one’s original impression.

The first article of the first chapter of the General Provisions states “the purpose of this law is to protect the life and health of maternity by establishing particulars on infertility operations and medical abortions.”

The second chapter is on medical operations for infertility. In recent years, a medical operation for infertility has become to be understood as medical technologies that assist reproduction for pregnancy, that is, infertility treatment. However, a medical operation for infertility as used in this chapter means “a medical operation to disable reproduction without removing genital glands.” In other words, it is a medical operation to prevent pregnancy.

The third chapter is on the protection of maternity. It stipulates physician-authorized medical abortions and a physicians’ guidance for controlling conception. The Maternal Protection Law is a law stipulating medical operations to prevent pregnancy.

Many women are capable of bearing children, but that does not necessarily mean that every such woman gives birth. However, women without children have been discriminated against for a long time because of deeply held general beliefs such as “a woman becomes a full woman-being by bearing a child” or “bearing a child is a matter of course.” Historically, women’s bodies were often controlled by the state or rulers for increasing and sometimes for decreasing the population as well.

For over 100 years since the crime of aborting a fetus was introduced into the criminal law in 1880 and even today, in the 21st century, Japanese law stipulates medical abortion as illegal. The 212th article of chapter 29 (The Crime of Abortion) in the Criminal Law states “a pregnant woman who has an abortion with the use of medical substances or with other methods, will be subject to imprisonment of one year or less.”

During Japan’s war of aggression through 1945, while medical abortions were prohibited and contraception became subject to control, women were considered as “reproduction troops” with a policy to “bear more children and populate your country.” Women were forced to give birth not only by the state but also sometimes by other people surrounding them, including their husbands. The lack of availability of contraceptive methods and lack of cooperation in contraception by their partners sometimes resulted in a woman’s pregnancy (we also often hear of this in the current era). In that scenario, with abortion being illegal, some women were harmed by risky back-alley abortions and, because of this, some of them lost their lives. Some chose to commit suicide and some had no choice but to give birth against their will. This is a reality
even now in places where abortion is prohibited by law.

It is a woman’s fundamental human right that she is able to choose - without being coerced - whether to give birth or not. (I believe this is the basic reproductive right.) As a strategy toward this goal, access to contraceptives and medical abortion, as well as a support system for women to raise children with a sense of security are necessities.

Although it was included as an exception, with the crime of abortion still in effect, the Eugenic Protection Law of 1948 made medical abortions, which had been previously prohibited by law, available at clinics. Conditions for women became better if not the best. However, the motivation of this particular law did not lie in reproductive rights, but rather in population control.

Both before WWII and in the modern age, while the state and the social system encourage women to give birth, they sometimes force women and their partners, despite their wills, not to have children. In fact, the Eugenic Protection Law was used to make handicapped and infirm individuals, according to the state, give up their right to have children. For example, patients who had Hansen’s disease (leprosy) were forced into sterilization or medical abortion in return for the privilege to marry within the sanitarium. Sometimes, such operations were performed even without the consent of the patients.

The first article of the Eugenic Protection Law states “the objective of this law is to protect the life and health of maternity while preventing the births of inferior descendants.” You may recall having seen a similar statement rather recently. If so, it is because it is identical to the first article of the Maternal Protection Law mentioned at the beginning of this article, except a few words such as “inferior descendants” have been removed.

At the end of the 20th century, the National Diet finally realized that the Eugenic Protection Law was violating human rights, removed any clauses related to eugenics and renamed it the Maternal Protection Law. This means the problem was simply swept under the rug. The eugenic ideology that disabled and infirm individuals ought not exist and bear children is still present in laws and in the state system. Violations of human rights under the Eugenic Protection Law have never been examined. Neither apologies nor compensations have been made to the victims of the Act. No public activities or education have been introduced for changing the awareness of the public.

In addition, the idea that women’s bodies can be used as a means of controlling the size and quality of the population has not changed at all. The evidence for this fact is the combination of the Crime of Abortion, the Maternal Protection Law, and the Mother and Child Health Law. The Mother and Child Health Law established health checkups and the booklet (Boshitecho) to keep track of the child’s health and immunization. This law was enacted to supervise the mother and newborn so that the child will grow up capable of joining the workforce.

Women are the ones who own bodies capable of pregnancy. They will surely not conceive a child without men, and indeed sharing childbirth and child-rearing is important; however, the physiological change called pregnancy occurs only within women. Therefore, women ultimately should have the right to choose with her own will whether or not to give birth. As far as sexual intercourse is concerned, there must be no violence or coercion involved, her body and feelings must not be trampled but respected. It is essential that safe and affordable contraceptives are available to all.
Furthermore, when individuals are discriminated against by being discouraged to have their own children because they are disabled, poor, immigrants, or from a minority background, it is a violation of reproductive rights. Finally, we need social support for bearing and rearing children as well.

The Maternal Protection Law lacks the perspective of these reproductive rights. In terms of women’s human rights and the protection of maternity, one has to say that this particular Law is misguided.

In Japan as in many parts of the world, women have not acquired enough reproductive rights yet, and now the partial reproductive rights achieved through various movements are subject to backlash.

The Bush Administration of the United States is attempting to promote abstinence education as it denies the reproductive rights confirmed at the UN International Conference on Population and Development in Cairo. In Japan, there is now a movement to recall the educational booklet entitled “Love and Body in Adolescence” intended for middle school students, as some claim that “explicitly introducing contraceptive methods is going too far.” There is also a movement to delete the sections on reproductive rights from the Ordinance of Gender Equality of each local government. Furthermore, a measure against low birthrate is now about to be established, which is the modern version of “bear more children and populate your country.”

The common factor of the backlash arguments is based on the patriarchal ideology that women are not allowed to decide whether or not to give birth in order to protect “the traditional family” and the fixed gender roles. The right of self-determination, “who decides what and for whom,” is in jeopardy. The identical framework to the one adopted by the United States and Great Britain in their attack on Iraq with the argument “for the freedom and democracy of the Iraqi citizens,” is occurring everywhere. A characteristic of backlash arguments is that women, youth, or those who cause inconvenience to the self-interest of the backlash are not allowed to have self-determination and self-actualization.

To resist this backlash, we held a rally on the 16th International Day of Action for Women’s Health (May 28), appealed by the Women’s Global Network for Reproductive. To acquire what we have not acquired and at the same time to not allow what we have finally acquired to be taken away, we have so much to strive for everyday.

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