
Measures To Protect the Rights of Marginalized Groups in Vietnamese Law from the Fifteenth to the Nineteenth Centuries - History and Lessons

¹Dr. Tran Hong Nhung, ²Dr. Doan Thi to Uyen

^{1,2}Hanoi Law University, Vietnam.

Email: nhungshl@yahoo.com, touyenvb@hlu.edu.vn

Abstract

Summary: Access to human rights, including the rights of marginalized groups from an interdisciplinary perspective in jurisprudence and history, has been studied in a number of monographs. However, the works mainly focus on 1 specific period in Vietnamese feudal law or learn about the rights of certain groups. A systematic, comprehensive view of Vietnam's feudal legal system in terms of demonstrating the rights of marginalized groups therefore remains a gap in research in general. Studying legal documents in Feudal Vietnam from the fifteenth to the nineteenth century, it can be seen that the monarchical state through the dynasties has focused on protecting the rights of many vulnerable people in society, namely: women, the elderly, children, disabled people, ethnic minority, lonely people with nowhere to rely on, prisoners, slaves... Not only prescribed in writing, the state also applies different solutions so that those rights are guaranteed to be implemented in practice. The experiences of his fathers in history should be inherited and referenced in the context of Vietnam today towards the goal of building a socialist rule of law, contributing to improving the effectiveness of the development and improvement of the law on the protection of human rights in general, the rights of marginalized groups in particular.

Keywords: protection of rights, marginalized groups, history, lessons.

In recent years, in Vietnam, the development and enforcement of laws on ensuring human rights and citizens' rights have been strengthened and given more attention, especially through the formulation and implementation of a strategy for reforming a judiciary serving the people, for the people to meet the requirements of building a socialist rule of law state. With the view that "leaving no one behind", the State has paid attention to and created favorable conditions for disadvantaged groups to participate in all areas of life. However, in the Vietnamese legal system, there are still legal gaps and limitations in the enforcement of laws on ensuring the rights of disadvantaged groups, especially for women, ethnic minorities, people with disabilities and children. In an attempt to find solutions to overcome gaps and limitations in ensuring the rights of marginalized groups, it is practical to throwback in history and learn about the regulations and experiences of his father in protecting rights for those with disadvantaged status and difficult living circumstances in society. Although in the feudal period, the legal provisions could not achieve the protection of human rights as defined by the current concept, but to some extent, the concerns to protect those special objects has demonstrated the humane and humanity in the state's policies, showing the closeness to the people of many feudal dynasties in Vietnam, which are suggestive values for the formulation and implementation of legal policies in general and policies towards the vulnerable in particular in Vietnam today.

The concept and viewpoints of the Vietnamese feudal state on protecting the disadvantaged group

In the feudal period, although the people were "liege" to the king, the ideas of treating the people as the root, respecting the people, and being close to the people were also expressed through the views and policies of the state through dynasties. Derived from an agricultural economy with the constant requirements of water management and irrigation, stemming from the principle of building country in tandem with defending the country and the idea of obeying the orders of heaven and following the will of the people of Confucianism, the Vietnamese feudal kings were always aware of the role of the people and promoted the great unity of the whole nation. The ideology of respecting the people, being close to the people, and taking the people as the foundation has deeply ingrained from king to mandarin. Tran Quoc Tuan once said that "*tolerating the people's strength as a durable foundation is the supreme policy of defending the country*". Or Nguyen Trai emphasized, "*Every person in positions of authority to govern the people must follow the law of fairness, give up embezzlement, correct laziness,*

consider the affairs of the nation as their own, and consider taking care of their people as their primary concern"¹. In light of that policy, the Vietnamese feudal dynasties paid attention to different objects in society, especially the disadvantaged group and adopted various measures to protect the interests of this group of people. Reviewing state legal documents (including codes, canon collections, documents promulgated by the king) and private legal documents or village conventions promulgated by villages, it can be seen that the feudal law was concerned with protecting the legitimate rights and interests of many subjects considered to be weak in society. In *the National Criminal Law* of the Later Le Dynasty, the code is considered to be the pinnacle of legislative achievements in the feudal period, there were 45 out of 722 articles directly protecting the rights and interests of women, the elderly, children, the disabled, the orphans, the homeless, ethnic minorities, prisoners, and slaves. Among those, the provisions protecting women's rights took a largest part. These subjects were considered weak because of their disadvantages, difficulties and barriers in the feudal society:

- For the women, because they live in a feudal society with deeply-ingrained Confucian ideology, they do not have many rights in the family as well as in society. They have no access to education and exams, little property of their own, and no social status. In the family, they always have to stand behind the husband and the husband can easily leave his wife when the wife commit a "disgraceful" act².
- Ethnic minorities live in difficult areas, have low education attainment, and are subject to the rule of both local and ethnic mandarins and court mandarins. Living under two layers of oppression, life is precarious and unstable. They are incapable of defending themselves against the injustices and oppression that other classes treat them.
- The elderly and children are the two subjects who are less able to participate in production, and must rely on other members of the family for their living, so they are easily disadvantaged.
- Disabled people, homeless people: Like the elderly and children, these two groups have limited ability to participate in production to support themselves, their lives have to depend on other people and social welfare.
- People who are oppressed physically and mentally: Stemming from the geographical position and historical characteristics of "building the country together with defending the country", during each war, the Vietnamese people suffered oppression and exploitation and were unable to protect themselves or after each self-defense war, the Vietnamese people usually fell into situation of dispersal and loss of their homes and properties, partition of their families. Consequently, their lives lamented again. Displaced people and poor people who were damaged in the war are also classified as vulnerable people. On the other hand, the plunder of the enemy, the village tyrant, natural disasters, and epidemics also make the farmers' lives fall into poverty, loss of property, sickness, disease and death.
- For prisoners who have limited freedom and are easily mistreated such as: no medicine when being sick or ill; forced interrogation; torture; forced to serve prison guards..., their fundamental rights are easily violated and are not guaranteed. This is also an object protected by Vietnamese feudal law through many provisions in two sets of ancient laws, namely the National Criminal Law and the Hoang Viet Law.

On the basis of identifying and demarcating disadvantaged groups, viewpoints and principles of the Vietnamese feudal states in protecting disadvantaged groups are:

First, each group of people at different times enjoy the state's incentives in both material and spiritual terms. For the disabled, widows, and children, the state will grant a piece of land under the military land policy to ensure their lives. For those who are sick and die lonely, the local commune officials have to take care of and bury them properly. For women who are single widow or elderly, they also receive the state's attention on material and spiritual matters. In addition, the State maintain policies to help the poor, disabled, orphans and widows with food, shelter and medicine; soldiers, prisoners in captivity; and forced labor are also taken care of.

Second, the law gives priority to the mitigation of penalties and the application of beneficial principles in penalty enforcement to disadvantaged groups. For example, ethnic minority groups are allowed to use their custom to punish when they commit crimes together. Article 40 of the National Criminal Law stipulates "People in the upland region who commit crimes together will be punished according to the customs of that region". Or those who are disabled when committing crimes are applied the most beneficial regulations for them: "When the crime is committed before, but is only detected when the criminal are old or disabled, they will be punished according to the old age and disabled law" (Article 17 of the National Criminal Law). For women or pregnant women who commit crimes, there are provisions to exempt or reduce punishment.

¹ Nguyen Trai, Full collection, Social Science Publishing House, Hanoi, 1976, p.199

² Childless, lustful, disobedient to parents-in-law, talkative, stealing, jealous, evil

Third, allow vulnerable people in certain situations oppressed by power to ask for protection of their rights³. The Ly dynasty also set a bell in Thang Long Citadel so that “*People who endure unjust lawsuits should ring the bell*”, a legal institution that protected human rights very effectively at that time or under the Nguyen Dynasty, Dang Van Drum was set and the governor received the grievances from the people.

Measures of the Vietnamese feudal state to protect marginalized groups from the 15th to the 19th centuries

2.1. The State recognizes and protects the legitimate interests of disadvantaged groups through clear and specific provisions of the law

a. Regulations to protect the rights of women

In Vietnam’s feudal society, since the 15th century, Confucianism has become a unique ideology, and views that uphold patriarchal families, “value men over the women”, “one boy means one, ten girls mean none” have degraded the role and status of women compared to men in the family and in society. The Vietnamese feudal law institutionalized Confucian ideas, rituals and moral standards, which set forth many obligations and strict sanctions for women. However, due to the tradition of the water rice agricultural culture with the characteristics of respecting women, the feudal legislators recognized and protected a number of women’s rights and interests in various fields. There are many provisions that are different and cannot be found in the Chinese feudal law - a law based on cultural characteristics that favor and respect men.

In the National Criminal Law, regulations on women’s protection account for the largest number of regulations on protection of disadvantaged groups. In the comparison between the National Court of Criminal Law and the Hoang Viet Law, many previous studies have suggested that the Nguyen Dynasty’s code eliminated all the progressive laws of the Hong Duc Code, including the rules protecting benefits of the women. In fact, studying 398 articles of law and 593 rules of Hoang Viet law, it is easy to see that the laws and regulations related to women are scattered in different sections and parts, mainly concentrated in the Law on Household and Criminal law. The number of articles related to women accounts for a large proportion (17 articles and 48 regulations), which shows that women have a certain position in Hoang Viet’s laws. Based on the provisions of these two codes, it can be concluded that feudal law has recognized and protected a number of women’s rights in most areas of criminality, marriage, family, contract, inheritance, ownership, litigation...

Albeit the criminal law of the feudal period in Vietnam set a system of strict punishments³, it still shows a humanitarian spirit for the disadvantaged groups in society, including women. Women are less punished than men and can use money to atone for some crimes. Article 1 of the *National Criminal Law* of the Later Le Dynasty specifies: “Caning ... this punishment together with exile, sinners, demoting or separate trial are applied to men only” (Institute of History, 2009, p.19). In the first right of *Hoang Viet’s rule* under the Nguyen Dynasty, the section “*Nạp thực chư lệ đồ*” (Chart of atonement rules) identified the subjects who were allowed to pay money for atonement, including: “In the case of the offender are the elderly, children, sick, disabled or employees of the Astronomy and Meteorology Department, and women, calculate the amount to be punished and permit ransom money according to the custom” (Institute of History, 2012, p. 218).

When executing judgments, the law also stipulates: “For women who commit the death or misdemeanor crime and are pregnant, it is required to wait for 100 days after their giving birth to execute the death or canning penalties (Article 680 of the *National Criminal Law*) (Institute of History, 2009, p.133). Women enjoy the right not to be incarcerated when committing a crime of exile or below. *Hoang Viet’s law* chapter “*Đoán ngục*” has a rule “Women commit crimes” and 4 attached regulations: “Every woman who commits crimes, except for fornication and the death penalty that must be imprisoned, must be handed over to the husband for custody. If they don’t have a husband, they must be handed over to their relatives (at the level of mourning for each other) or to the village to take care of. They will present when being summoned by the bureaucrat, no detention is allowed. Any violation will be punished 40 canings” (Institute of History, 2009, p.977).

In the field of marriage - family, the law recognizes and protects a number of women’s personal rights, such as the right to refuse the offer of marriage (Article 322 of the National Criminal Code) if the male is disabled or commits a crime or goes to bankruptcy; right to apply for a divorce in the following cases: the husband has left his wife for 5 months without meeting (the wife is allowed to notify the local authorities and the commune officials

³ Household Law. Article 6: Taxes, irregular free working, Institute of History. *Vietnam Ancient Laws; National Criminal Law and Hoang Viet Law*, Id. p. 402

³ The feudal system of the Five Penalties consisted of five punishments: xu (beating with a whip), staff (beating with a stick), tu (working as a laborer), saving (being exiled to a far distance), and death (killing).

to testify) then he will lose his wife. If the wife has a child, the term is granted for one year (Article 308 of the *National Criminal Law*) (Institute of History, 2009, p.70); if the son-in-law insults his parents-in-law with an absurd matter, bringing the matter to the mandarin will give him a divorce (Article 333 of the *National Criminal Law*) (Institute of History, 2009, p.74); If the husband goes missing or runs away for 3 years and does not return, the wife is eligible for digamy and not have to return the wedding gift (Article 108 *Hoang Viet Law*) (Institute of History, 2012, p.). After the end of the marriage period, the **woman** is allowed to remarry.

The woman also has the right to own private property and to co-own the common property with her husband. In the documents of buying, selling, transferring, pledging, and donating property, which are listed in the *Quốc triều thư khế thể thức* (the Le Dynasty's collection of contract templates), usually in the names of both husband and wife. Although feudal law attaches great importance to the assignment of inheritance to sons and grandsons to worship grandparents, parents and ancestors, it still acknowledges the inheritance rights of the eldest daughter (Article 391 of the *National Criminal Code*) (Institute of History, 2009, p.84). The law of the Le dynasty also allowed the wife to enjoy the right to inherit property in case the husband died if they do not have children (articles 375, 376), the daughter was divided the inheritance equal to the son.

b. The regulations to protect the rights of the elderly, children, disabled people and ethnic minorities

Feudal laws exempted the elderly, children, disabled people, and ethnic minorities from committing certain crimes and applied punishments in their favor. In the *National Criminal Law*, the leniency of crime is regulated in Articles 16, 17, 680, etc. For example, Article 16 stipulates if people aged 70 years or older and 15 years of age or younger commit crime of exile or below, it is allowable for them to make atonement with money; if they commit to steal or hit someone, they can pay money atonement; no penalty for other crimes. If they are 80 years old or older, 10 years old or younger, or are disabled, if they commit treason or murder worthy of death, they must report to the king for decision. Besides, not guilty. Persons from 90 years of age or older, and those aged 7 or under, even though they are guilty of death, shall not be executed. Article 17 of the *National Penal Code* stipulates that the application of the law in favor of the elderly and young children: "In case the offender committing to a crime when he/she was young and not disabled, but the crime is discovered when he/she are old and disabled, the applicable law is law for disabled. In case the offender committing to a crime when he/she was little, and the crime is detected when he/she grew up, then the law that prevail at the time he/she was little will be applied" (Institute of History, 2009, p.24).

For girls, the law also provides certain provisions to protect the interests of this group. Article 313 of the *National Criminal Law* prescribes: "Daughters and orphans, who sell themselves without any guarantor, the buyer and the person who wrote the deed, and the witnesses will all be subject to the crime of caning as prescribed (women 50 lashes, men 80 sticks) and pay a fine for the buyer (Institute of History, 2009, p.70). The law of the Le dynasty also stipulates that if committing adultery with a girl under the age of 12, you will be prosecuted for raping, whether or not the girl consents.

For ethnic minorities, the *National Criminal Law* has recognized the unique customs and habits of the ethnic minorities and allowed them to apply the custom in the case of ethnic minorities committing crimes together. Article 40 stipulates: "Ethnic minorities who commit crimes together shall be judged according to their customs. Ethnic people who commit crimes against other people are judged according to the law" (Institute of History, 2009, p.27). Article 164 of this code also aims to protect the rights of ethnic minorities when severely punishing mandarin's acts of bullying and unjust detention: "The administrators of the Man Lieu people, are in charge of the lawsuits in their area. If they send their family members to bring warrants to arrest people or bully people and keep them in prison, they will be fined 60 canings, and demoted by 2 levels" (Institute of History, 2009, p.47). If "The Man Lieu⁶ plundered each other and killed each other", "the punishment is one level softer than the crime of robbery and murder; and the reconciliation is permissible" (Article 451 of the *National Criminal Law*) (Institute of History, 2009, p.94).

c. Protecting the rights of people in difficult circumstances, prisoners and slaves

The widows, widowers, orphans, the severely disabled, the poor who have no loved ones to rely on, and the lonely are all objects of legal protection and care for their lives. Article 294 of the *National Criminal Law* indicates: "In the capital city or wards, alleys, and villages, if there are sick people that no one can take care of who must live on the streets, bridges, and pagodas, the communal mandarins there must set up tents to care for them, and give them food, porridge and medicine, in order to save their lives, and not leave them to groan in pain. If they are unlucky enough to die, their death must be reported to the superior and, depending on the burial conditions, the corpse must not be exposed; If disobeying this order, the ward or commune official will be charged with demotion or dismissal. (Institute of History, 2009, p.67). Article 295 of the *National Criminal Law* stipulates: "For widows,

⁶ Man Lieu: Refers to the mountainous ethnic groups.

widows, orphans, and the severely disabled and poor who have no relatives to rely on and are unable to earn a living on their own, the local officials must accept them and feed them, if they abandon those people, they will be punished with 50 lashes and demoted by one level. If those people are provided with food and clothing, but the mandarins take the rake-off, they must be charged with the same crime as storekeepers who steal public property” (Institute of History, 2009, p.68).

The law punishes acts of infringing upon the prisoner’s body. Article 658 of *The National Criminal Law* stipulates: “In case that inmates who do not deserve to be imprisoned, but are imprisoned, or who are not subject to shackles, but being shackled, the jailer shall be fined 70 canings” (Institute of History, 2009, p.128). In terms of inmates who need to be taken care of their health and treated for illness, Article 663 of *National Criminal Law* prescribes: “If a prisoner who commits a serious crime is injured and needs testing, or a prisoner who is sick and needs to be given medicine and food, but the jailer do not report to superior; and if prisoners who commit minor crimes and deserve to be bailed out, but the jailer do not allow them to do so, the jailer will be fined 80 canings; If the prisoner die because of these reasons, the jailer will be demoted by 2 levels” (Institute of History, 2009, p.129).

In order to protect slaves, Article 491 of *the National Criminal Law* articulates: “If the slaves who are released to become a normal person and have already been issued with certificates of freedom, but are still forced to stay as servants, the mandarins will be punished with 50 lashes and degraded by 1 level. The slaves are still allowed to return to normal life according to the certificate” (Institute of History, 2009, p.67).

It is also worth noting that the legislators have described very specific acts and corresponding penalties, which facilitates clarity and convenience in understanding and applying the law. Taking the evidence right in Article 333 on the crime of violated intercourse in the Hoang Viet Laws of the Nguyen Dynasty, the legislators precisely defined and described the behavior as well as the level of violation and different levels of punishment: agreed intercourse (boy and girl voluntarily to have intercourse with each other), cheated intercourse (a man who seduce a woman to another place to have intercourse) is treated as agreed intercourse with a fine of 80 canings, while forcible intercourse (forcing a woman to commit adultery), gang rape (taking turns rape a woman) will be hanged. If the forced intercourse is not successful, the offender will be punished with 100 canings and exiled to 3000 miles. If the offender commits adultery with each other and give birth to children, they will all have to adopt the children. If the conspirators have a connection and are agreed at home, the punishments for the offenders (in case of agreed and cheated intercourse) will be reduced by one level. Officials and military people who commit violated intercourse with other officials’ wives, both the cheating men and women are hanged. Gang rape the girls in the good family, according to the law, the leaders will be beheaded and accomplices will be fined with 100 canings and exiled to 3,000 miles⁴.

Lawmakers also pay great attention to the interpretation of the law: In Hoang Viet, the law has a separate section (Volume 1) that deals with general principles of the code, which explains the terms of the law regulations on penalties and rituals related to the law. The final volume contains rules of comparison and references to the rules that which are used to compare during the application. It is worth noting that each volume comprise of regulations accompanied by a number of rules and explanation, which are arranged in a certain order. The rules associated with the law to supplement and comprehend the content of the law. The content of the laws therefore does not overlap or duplicate. The accompanying explanation after each regulation helps clarify the meaning of the law, creating favorable conditions for law enforcement. For example, Article 19 of Hoang Viet’s law stipulates: If a woman commits a crime, she is beaten with a staff. If she commits adultery, she will be punished by forcing her clothes to be stripped (only her loincloth remains). As for the other sins, they are allowed to wear a thin shirt. All are free of lettering. If a woman commits a crime of exile, she will be punished with a penalty of 100 canings, the exceed canings can be atoned. The part of the regulations apparently explains: Women who commit adultery will lose all shame, so when they are convicted, they are forced to take off their thin clothes to cover them up, leaving only a loincloth. If a woman commits other crimes, the execution will permit them to wear a thin shirt. These penalties are deterrents to fear. If a woman commits theft, she will also be exempted from liking letters. The forced labor when adjudicating criminals, the strength of women could not satisfy, so the offenders of the crime of exile are all subject to 100 canings, and the atonement for the remaining canings is permissible (Institute of History, 2009, p. 305).

Protecting the rights of disadvantaged groups by clearly defining the responsibilities of mandarins and imposing heavy sanctions for acts that seriously violate ethical standards, morals, and important social relations in society

Feudal law encompasses many provisions on legal responsibility for mandarins with very heavy penalties when they commit crimes of coercion, rape, and raping women and girls. Those who commit these crimes shall be sentenced to imprisonment or death along with payment of money to the parents of the women and girls. Article

⁴ Ancient laws of Viet Nam, the National Criminal Law and Hoang Viet Law, Id., p.869-872.

409 of the National Criminal Law stipulates that if a prison official commits adultery with a woman who is having a lawsuit, the punishment will be one level heavier than that of ordinary adultery. Or Article 707 of the National Criminal Law: *The prison officials who torture and beat injured prisoners without cause will be punished according to the law of beating the wounded. If they cut down on clothes, rice, and food, they will be charged with the crime of stealing. If, because of their cutting down and torturing, the prisoner dies, then they are considered a criminal of exile. Prison officials and prison warden who know but do not report are also guilty of the same crime, but the punishments are reduced by one level.* Article 333 of Hoang Viet law of the Nguyen Dynasty law unambiguously states: “If a woman denounces an unsuccessful cheated intercourse, her relatives and village representative must immediately report it to the local authorities for investigation. If there is evidence, consider the seriousness of the crime... If the family has reported it but the village representative does not immediately report it to the mandarin and complains and then does not immediately judge it, so that the woman has to repent and kill herself, the village representative will be fined with 80 canings, similar to the crime of thief. The local authorities follow the rules of procedure”⁵. Clearly identifying state responsibilities for human rights and citizens’ rights is one of the basic conditions to ensure the reality of human rights.

The law applies heavy sanctions with a high deterrent and preventive nature. Crimes that infringe upon the honor and dignity of women and children are severely punished. Hong Duc Law has a chapter of prohibited intercourse with 10 articles, which stipulates the handling of crimes such as adultery, incest, rape, and seduction of a woman... Article 403 of the prohibited intercourse chapter of the law stipulates the lightest punishment for the crime of rape is exile, the highest is the death penalty. The crime of exile has 3 levels: near exile is to go to Nghe An, to wear shackles, to be beaten 90 canings, to be engraved 6 words on the face; medium exile is to go to Quang Binh, to wear two chains of chains, to be beaten 90 canings, to be engraved 8 words on the face; far exile is to go to Cao Bang, to wear three chains of chains, to be beaten 100 canings, to be engraved 10 words on the face. The death penalty is also divided into 3 levels: “strangling, beheading; mutilation, increasing or decreasing depending on the crime”. The law under the Nguyen dynasty severely punished the crime of gang rape. Article 332 of Gia Long Law allows the immediate execution of those who use violence to rape and then kill the victim. Accordingly, the crime of gang rape if the victim dies, the rapist is slashed immediately and the accomplice is also strangled. The law of Minh Mang and Thieu Tri dynasties stipulates that those who take turns to rape women from the good house are considered “thugs”, beheaded (immediately slashed). The accomplice is punished by detention for a while before strangling. The accomplice who has not committed the rape act is considered an accomplice, the penalty is reduced by one level.

The official document of the reign of King Tự Đức recorded that in 1856, a man named Thach La went to the field to visit rice, saw a woman there alone, and took a knife to rape her, but he couldn’t do that, so he get into a rage, killed the victim, and hide the body to erase the traces. Upon investigation, the court found that this was a very cruel act, and the law was hard to tolerate. Thach La was therefore executed by beheading. In the 11th year of Minh Mang (1831), there was a case of Doan Duc Hoang, a native of Tien Du, Bac Ninh province who was not allowed to rape and hit the victim’s face, causing her serious injury and death. The incident was discovered, Hoang fled, then confessed to rape to death but did not specify the reason. According to the penalty of rape, Doan Duc Hoang was convicted of beheading after detention.

To prescribe clear and strict procedural order and procedures to protect people’s legitimate rights and interests, allowing people to denounce acts of infringing upon their rights and interests

With the point of view “Judgments value the truth, so arrange the mandarins from the district, then to the palace, to the town, to the city, in order to judge, to show prudence”⁶ and “All people inside and outside the town, whoever has injustice, is allowed to file a denunciation”⁷ of the feudal kings of Vietnam, those with injustice and pressing reason are allowed to make a report and complain to the mandarin. According to statistics in the National Court of Law, there are 8 out of 31 articles that refer to the right of the petitioner to file a complaint and make a complaint; in the National Criminal Law is 4/722 articles. This shows the level of concern of the legislators for this litigant. According to the provisions of Article 1 of the National Court of Law, the litigants may file a lawsuit but need to file a lawsuit at the right level, if “filing beyond the right level, the second yamen cannot serve the

⁵ Vietnam Academy of Social Sciences, Ancient laws of Viet Nam, the National Criminal Law and Hoang Viet Law, Vietnam Education Publishing House, 2009, p. 873

⁶ National History of the Nguyen Dynasty (2004), *Đại Nam thực lục*, Volume 2, Education Publishing House, pp.715-716

⁷ *Đại Nam thực lục*, Volume 4, Id., p.1012.

examination sentence”⁸. However, also according to this provision, in the case of severe bullying by the nobles and unjust events, which are not covered by the inspection regulations of any yamen, there is no way to report the cases, or the case has been justly tried and rectified but remains unsolved, then the litigant can beat the drum to file the complaint⁹.

The person who makes a report and complaint has the right to appeal or request an appeal at least 3 times. Although the grounds for appeal are not specified as a separate law, through many related regulations, it can be seen that there are many provisions related to the grounds for appeal such as: “unreasonable judgment”, “unsolved”, “not yet convinced”, “there is something pressing about the situation, it has not been clarified”, “the judge is unfair”, “the trial is not transparent”, “the trial cannot be verified”, “judgment with lies”, “if the guilty do not agree”, “costs too much”. Besides, if the 3 trials are the same without any difference and all are appropriate, then stop and refuse to case. If after 3 trials, the outcome is inappropriate and susceptible, the adjudicating body continues to receive the appeal¹⁰. According to Article 687 of the National Criminal Law, those who have a complaint indictment will have the right to express their opinions when questioning the crime. If the complaint is filed, they will be punished with 30 lashes but have the right to confront. This provision shows that the law of the Later Le dynasty partly protected the right of the complainant when there was an injustice and ensured the adequacy of the complainant and was the basis for the state to monitor the court proceedings.

Vietnamese feudal law also concludes provisions on the responsibilities of mandarins in trial and the accompanying penalties. According to statistics in the National Criminal Law, there are 29 articles on this issue¹¹; Hoang Viet's law has 11 articles¹². According to these articles, officials must be righteous in their duties, must not mistreated offenders out of personal love or hatred, may not accept bribes, must not dismiss lawsuits, and must adjudicate them on time and in accordance with the law and the deadlines for settlement of cases...

During the organization of law enforcement, the state has ways of propagating and disseminating the law that are easy to understand and apply

In the history of Vietnam, right from the 15th century, the provision of information and creating favorable conditions for the people to know was paid special attention by the Le dynasty. In the conditions of feudal society, without mass media, information was disseminated by direct methods: such as through the “town crier” to announce news, publish information notices in public places, attend community gatherings. Historical records as well as legal documents have reflected on the methods of propagating and disseminating the law to the people.

In the year of Tan Hoi (1491), in Thang Long citadel, King Le Thanh Tong built a communal house at the South gate (Dai Hung gate) called Quang Van Dinh, to be the place to post the ordinances governing the people¹³.

During the reign of Revival Le, Lord Trinh directed: “The above things, which were issued throughout the country, all the consecrated offices, areas and provinces, continents, and districts must all be copied into one copy and hung in the workplace and transferred to the respective communes. Each commune has written a poster hanging in the communal house, for the officials, the examiners, the students, the village chief. On the day of the village’s work, men, women, the elderly, and the young people gather to explain, understand the vision, to be absorbed by the eyes and ears, to know the admonition. From here on, people’s hearts gradually follow good practices”¹⁴

In addition, state officials from central to local levels need to provide timely information without any delay, so that people know. Article 220: “When there is an edict issued by the court, but the officials do not copy and post it to show the military and people clearly know the will of the king, but disregard that edict as frivolous, they shall be punished, demoted or dismissed”. Article 586: “In case of catching a stray buffalo, horse, or boat, without presenting it to the customs authority to seal the certification, and to post a notice (hang up a notice board to let everyone know) to let the person who has lost their property come and receive, the punishment is demotion or criminal”. The law also prohibits tearing up public announcements, papers posted in public places (article 149), not disclosing state secrets (article 116)...

In order for the law to come into life, the state has launched propagation and dissemination the law that are very close, easy to understand and easy to apply. The official laws of dynasties such as the National Criminal Law of

⁸ Han Nom Research Institute, 2006, *Some legal documents and Vietnamese feudal laws from the fifteenth to eighteenth centuries*, volume 1, Social Science Publishing House, pp. 718

⁹ Han Nom Research Institute, 2006, Id., p.720

¹⁰ Han Nom Research Institute, 2006, Id., p.719

¹¹ Articles 666, 667, 669, 672, 673, 679,684, 675, 683, 685, 686, 698, 699, 700, 702, 703, 704, 705, 706, 711,712, 713, 716, 717, 718, 719, 720, 721, 722

¹² Articles 303, 311,374, 375, 376, 377, 378, 379, 380, 382, 388,

¹³ Ngo Si Lien and the historians of the Le dynasty, *Dai Viet historical records*, Volume 2, Id., p. 510

¹⁴ Ngo Si Lien and the historians of the Le dynasty, *Dai Viet historical records*, Volume 2, Id., p. 265

the Later Le Dynasty with 722 articles and the Hoang Viet Law of the Nguyen Dynasty with 398 articles all are written in Chinese characters with the content of many provisions being quite long and difficult to remember in comparison with the common knowledge of the vast majority of Vietnamese residents at that time. So that, the feudal kings distilled and communicated in a way that was easy to understand and apply and more suitable for the people. As Le Thanh Tong promulgated “24 precepts”¹⁵, assigned to the commune chiefs to educate the people. In the following period, Lord Trinh expanded 24 teachings of King Le Thanh Tong into 47 articles, distributed to villages and communes for the commune chief to read and preach to the people every year. In addition to the first things that talk about the responsibilities and obligations of the civil servants, the remaining things mainly talk about the responsibilities and obligations of each person in the family such as children to parents, wife to husband, duty of each person in social relationships, responsibilities towards the village and the state. Expressed in verses with humanity and education, the teachings are thus easy to absorb. Furthermore, through the protection of moral and ethical values, clearly defining the responsibilities and obligations of each person in social relationships is also a way to protect the weak. A passage from Article 4 of this text can be quoted: “Advice again in the marriage

Then the respect and compassion are steeped in humanity
Husband is awake to the need
Often use virtue to admonish a family
Live an ethic life
Don’t drink alcohol, don’t cheat...”

During the Nguyen Dynasty, in 1834, King Minh Mang also issued *Huấn dịch thập điều* (full of Thánh dụ Huấn dịch thập điều), later performed by King Tu Duc in Nom poetry with the name of *Thánh huấn thập điều diên nghĩa ca* admonishing the benevolent and moral and ethical standards of Confucianism. The teachings on how to behave, maintain stability and family happiness, admonish mandarins to do their duty, etc., when being understood and applied, are also a measure to ensure legitimate rights and interests of disadvantaged groups in society.

Lessons for perfecting the law for disadvantaged groups in Vietnam today

Currently, Vietnam has joined most of the international conventions on human rights and the internalization of the provisions of international conventions has also been promoted with the introduction of many legal documents to ensure the rights of human rights in general and the rights of disadvantaged groups in particular. For example, the Law on Gender Equality 2006, Law on Prevention of Domestic Violence 2007, Law on Prevention of Trafficking in Persons 2011, Law on Children 2016, Law on People with Disabilities 2010... Besides the achievements, the development, promulgation and implementation of legal regulations on protecting the rights of disadvantaged groups in our country also has limitations and inadequacies. The lack of guiding documents in law development and enforcement partly affects the rights of disadvantaged groups in practice¹⁶. Many regulations are not feasible and somewhat restrict the participation rights of disadvantaged groups⁸ and the propaganda,

¹⁵ Including progressive content, containing content teaching rules and rituals about equality between men and women. As in article 1, it is stated that “Mother taught children to obey the rules; Boys and girls all have jobs, they are not allowed to drink, gamble, practice singing to harm customs”, affirming the equal role between men and women in labor, reminding them not to participate in evils. In particular, Article 3 of the edict also admonishes: “*Husband and wife should be thrifty in doing business, unless the wife commits one of seven faults, husband are not allowed to abandon his wife, impairing the harmony*”. Or admonish a woman: “A widow who has no children, must stay at her husband’s house to until the end of the mourning period, not to bring the possessions home”, prescribed in Article 9.

¹⁶ For example, at present, Vietnam has no guidance to integrate the implementation of the Law on Domestic Violence Prevention and Control, the Law on Gender Equality into the proceedings of the Criminal Procedure Code and the Civil Procedure Code in divorce, property division, and child custody cases. In addition, many provisions do not consider gender (separation between men and women) leading to inequality between men and women when applying and using the law. Or in the 2015 Penal Code stipulates some general and non-specific contents such as: regulations on other sexual acts in sexual assault crimes, lewd crimes against people under 16 age but do not describe the objective behavior ... leading to inconsistent understanding when solving the case, partly affecting the guarantee of children's rights in practice...

⁸ For people with disabilities, the regulation of “healthy enough” when participating in recruitment in the common invisible labor and business sectors has created a drag, causing discrimination against people with disabilities. Practically in the field of labor, most labor recruitment enterprises require applicants to have a medical examination, based on which, the employer will conclude that the employee is healthy enough to work

dissemination, and access to the law as well as awareness and understanding of their rights of the disadvantaged are still limited; responsibilities and coordination between agencies and individuals are not clearly defined; cultural barriers ... are considered as the fundamental limitations of the implementation and guarantee of the rights of disadvantaged groups in Vietnam today. Gender inequality, domestic violence and sexual abuse in our country are still at an alarming level.

Looking back at feudal times, in order for the law to come into life, many kings had ways of propagating and disseminating the law to make it easy for people to understand and apply. In addition, the feudal state took measures to ensure that the legitimate rights and interests of the disadvantaged group were implemented, such as clearly defining the responsibilities and obligations of mandarins at work and towards the people. They stipulate transparent and strict procedural order and procedures in order to protect the people's legitimate rights and interests; protect the rights of marginalized groups through legal expressions that are easy to understand and apply; allow people to denounce when there is injustice and harassment¹⁷. During the reign of Le Thanh Tong, he issued templates to help law enforcers and people understand the content and how to make different types of documents such as petitions, claims for compensation, pledges, reports, and minutes. These solutions are still valuable in the current context.

Ensuring human rights and the rights of disadvantaged groups through strict and highly deterrent sanctions is also a measure applied by ancient legislators to prevent and handle infringements. Some current regulations are not feasible and do not have a high deterrent effect. For example, for adultery, there are different fines. According to current regulations, this act will be administratively handled from 3 to 5 million dong¹⁸ or criminally handled for violating the marriage regime, the maximum level is imprisonment from 3 months to 1 year (Article 182 of the Penal Code 2015). But it can be seen that the fine will hit the family's economy (including the wife's money), and for the criminal prosecution, it is very difficult to prove, so that sanction does not really work because the fines are low and difficult to bring effective in practice. Compared with the provisions on adultery in the feudal law, the act of adultery with another's wife will be punished with imprisonment or death (Article 401 of the National Criminal Law). For acts that infringe on the life, health and honor of women, the current law also needs stricter sanctions. Referring to the provisions of the Hong Duc Law and the Gia Long Law mentioned above, it can be seen that the ancient law punished very heavily. The Hong Duc Law has its own chapter of 10 Articles of prohibited intercourse, which stipulates the handling of crimes such as adultery, incest, rape, seduction of women and girls, etc. Article 403 of the prohibited intercourse chapter of the law prescribes penalties with the lightest punishment for rape is exile, the highest is death (Institute of History, 2009, p.86). With such a heavy fine, deterrence and prevention will be higher.

Conclusion: With the spirit of loving the people, respecting the people, trusting the people, the feudal kings of Vietnam issued many regulations showing their concern for the interests and lives of the common people, especially women, the elderly, children, the disabled... Acts that infringe upon the interests, dignity and health of these subjects are always subject to very strict criminal sanctions. It is a combination of the rule by law and the rule by ethics embodied in the spirit and practice of applying feudal laws to ensure the rights of the weak to be enforced.

Looking back at the past, learning about the regulations protecting the rights and interests of the disadvantaged groups in the feudal period is to both acknowledge the historical and contemporary values of the ancients law and apply the experience of his fathers in building and perfecting the law in Vietnam today, towards the implementation of the tasks and strategic objectives of the Resolution of the 13th Party Congress. Ensuring the rights of marginalized groups is not only stipulated in documents but also requires measures to make those rights accessible and practicable in practice.

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3. National Assembly (2015), *Criminal Code 2015*, Hanoi.

or not. Many jobs, people with disabilities can do, but they still do not qualify for the reason of not being healthy enough.

¹⁷ Nguyen Minh Tuan, Mai Van Thang (editor), *The State and Law of the Later Le Dynasty with the protection of human rights*, National University Publishing House, 2014

¹⁸ Decree 82/2020/ND-CP stipulating the sanction of administrative violations in the field of judicial assistance; judicial administration; Marriage and family; civil enforcement; Bankruptcy of enterprises and cooperatives

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