
WOMEN'S REPRODUCTIVE RIGHTS UNDER THE VIETNAMESE LAW

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Abstract

Reproductive rights are one of the fundamental rights of human beings and an essential part of women's rights. This right has been recognized in international agreements and laws in many countries worldwide. In Vietnam, women's reproductive rights are also specified, which has reduced maternal and infant mortality rates while increasingly recognizing and ensuring the provision of care services during pregnancy, childbirth, and postpartum. However, due to the influence of traditional thinking, some women still need to fully exercise their reproductive rights according to the law. On the other hand, declining fertility rates in countries including Vietnam poses new challenges that require adjustments to the law and measures to enforce these rights. To meet the practical requirements, compliance with international law and the spirit of the 2013 Constitution, research on women's reproductive rights is scientifically and practically meaningful in ensuring the enforcement of human rights in Vietnam. The reproductive rights of women discussed in this article include the right to decide freely and responsibly on the number and spacing of children; the right to receive information, counseling, and family planning services; and the right to enjoy maternity benefits.

Introduction

The right to reproductive freedom was first mentioned in the set of human rights in the non-binding Tehran Declaration at the United Nations Conference on Human Rights in 1968, which asserted: "*Parents have a fundamental human right to determine freely and responsibly the number and spacing of their children*". This content is also specified in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) of 1979. The Convention stipulates that member states must apply all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations; both men and women have the right to decide on the number and spacing of their children freely and the right to access information, education, and means to enable them to exercise these rights (Article 16, paragraph 1). Thus, this right has been recognized in international documents and has legally binding force. Accordingly, countries depending on their economic, political, and social conditions, acknowledge it in their laws and ensure its implementation in practice.

Vietnam's social reality and legal system demonstrate that recognizing, enforcing, and protecting human rights are fundamental objectives and principles consistent with the law. However, reproductive rights significantly impact all aspects of social life. Changes in population scale and structure affect the consumption of goods and services such as food, health care, education, housing, savings and investment, and the use of human capital, land, and technological resources¹. Although reproductive rights are recognized in the Party's platform and the state's law, they have changed appropriately to the economic and social development conditions during different periods. From 1961 to 2017, Vietnam's population laws aimed to reduce birth rates. Couples' right to decide the number of children they can have was limited to deciding whether to have children and having a maximum of two children (except for cases specified by law). Population work and family planning are important content of specific activities of the entire society. The population and family planning organization system is led by the Population and Family Planning Committees at all levels, from central to grassroots, which were established to manage and coordinate the implementation of the population and family planning program. The state provides family planning services, diversifies contraceptive measures, and encourages men and women to accept and use family planning measures (such as sterilization and abortion). Population

¹ Hanoi Law University (2020), *Legal Sociology syllabus*, Justice Publishers.

education and awareness-raising campaigns with the slogan “Two Children Per Couple” have become a standard that has spread deeply throughout society².

Since 2017, Vietnam's population has ensured replacement fertility and entered the aging period, so the population policy has shifted from Family Planning to Population and Development to meet the demands of the new situation³. Based on this, legal regulations to ensure women's reproductive rights have been increasingly improved to provide reproductive, maternal, and child health care services. However, some women are not fully aware of their rights, and childbirth is still risky for women and their children, as they do not have full access to healthcare services during pregnancy, childbirth, and postpartum. This is the cause of 600 maternal deaths and over 10,000 neonatal deaths recorded in Vietnam every year⁴, with a high rate of abortion, particularly among women under 30 years old, and the continued existence of coerced childbirth of male children. Examining legal regulations and implementing them to ensure women's reproductive rights is urgent. On this basis, the article investigates Vietnam's legal regulations on women's reproductive rights and the implementation of these rights in practice. It provides some recommendations for women to enjoy their rights.

Methodology

The research method regarding women's reproductive rights is based on examining Vietnamese legal documents related to women's reproductive rights, using reliable secondary data from state agencies and scientific research publications. Specifically, the article employs quantitative and qualitative methods based on survey results from 500 individuals and interviews with 30 people in Hanoi, Vietnam⁵. Through analysis, synthesis, comparison, and examination of data over time, the author draws scientific conclusions to evaluate the current situation of women's reproductive rights and identify the causes, as well as make recommendations to ensure that women have the right to decide freely and responsibly on the number and spacing of their children. They are educated, advised, and provided with safe and legal abortion services and benefit from the maternity regime as stipulated by law.

Results

The reproductive rights of women are recognized in Vietnamese law as follows:

Women have the right to decide the timing and spacing of births and to have one or two children.

According to Article 1 of the Ordinance amending Article 10 of the Population Ordinance 2008, the rights and obligations of each married couple and individual in implementing the population mobilization and family planning, reproductive health care: Deciding on the timing and spacing of births; Having one or two children, except in special cases prescribed by the government. According to the provisions of Article 1 of Decree 18/2011/ND-CP, cases of giving birth to a third child that do not violate the regulations on having one or two children include: Married couples having a third child, if both or one of them belong to an ethnic group with a population of less than 10,000 or belong to an ethnic group at risk of declining population (birth rate is lower than or equal to the mortality rate) according to the official announcement of the Ministry of Planning and Investment; Married couples having their first birth of triplets or more; Married couples who already have one child and have a second birth of two or more children; Married couples having a third birth or more, if at the time of birth there is only one living child, including the adopted child; Married couples having a third child,

² Communist Party of Vietnam, Central Executive Committee (1993), Resolution No. 04-NQ/HNTW.

³ Communist Party of Vietnam, Central Executive Committee (2017), Resolution No. 21-NQ/TW on population work in the new situation.

⁴ Ministry of Health (2015). Accessed on March 2, 2023. [ca80dbfd45b1406985f7cdbe0bb25603-1420862421_Chi_thi_cua_Bo_truong_BYT_ve_CSSKBM_TSS_1_2015.pdf \(moh.gov.vn\)](https://www.moh.gov.vn/Content/Upload/chi-thi-cua-bo-truong-byt-ve-csskkm-tss-1-2015.pdf)

⁵⁵ Hanoi Law University (2022), *Basic research project (led by Phan Thi Luyen): Implementation of the law on the right of spouses to decide the number of children, from the reality of Dong Da district, Hanoi, Vietnam.*

if they already have two children, but one or both children have a disability or a serious illness that is not hereditary and has been confirmed by the provincial or central medical evaluation council; Married couples who have their own child: Having one or two children, if one of them already has their own child; Having one or more children in the same birth, if both already have their own child. This provision does not apply to cases where the two people have had two or more children together, the children are still alive, and unmarried women give birth to one or more children in the same birth.

Women have equal rights with their husbands in deciding on the number of children, as stipulated by law: “All people are equal before the law” (Clause 1, Article 16 of the 2013 Constitution); “Husband and wife are equal to each other, with equal rights and obligations in all aspects of the family, in implementing the rights and obligations of citizens stipulated in the Constitution, this Law and other related laws” (Article 17 of the Marriage and Family Law 2014). Husband and wife are equal in implementing population policies and family planning (Point a, Clause 2, Article 4 of the Population Ordinance 2003). Thus, the law recognizes the equality between husband and wife in all aspects of family life. In this regard, the husband and wife have equal rights and obligations in deciding the number of children and caring for, raising, and educating children⁶.

Women have the right to be informed and advised on family planning services. The state ensures the provision of adequate high-quality contraceptive methods promptly and at a reasonable cost to address unintended pregnancies and limit sexually transmitted infections. The Ministry of Health has issued Decision No. 718/QĐ-BYT approving the plan to continue promoting and expanding the socialization of the supply of family planning commodities and services until 2030.

Women have the right to receive support and counseling on marriage and family and pre-marriage health counseling. Prime Ministerial Decision No. 588/QĐ-TTg has been approved to adjust the appropriate birth rates for different regions and population groups by 2030. The goal is to achieve a lower birth rate in areas with high birth rates, maintain replacement-level fertility in areas that have already achieved it, and achieve a two-child policy in areas with low birth rates. Therefore, localities implement measures to support couples to have two children, including building suitable daycare centers and kindergartens for families with young children, especially in economic, industrial, and urban areas. Developing services to transport and care for children is also important.

Support services for pregnant and childbirth women include counseling and healthcare for mothers and children, including infertility screening, prenatal and postnatal screening, and prevention of malnutrition. The state also creates conditions for women to return to work after childbirth, reduces personal income tax, and exempts or reduces contributions to public welfare funds for families. The state also encourages and supports couples to have two children by providing affordable housing, prioritizing enrollment in public schools, supporting the education costs of children, developing family economic management models, and establishing breast milk banks in some hospitals to help mothers who are unable to breastfeed due to illness or medication. Breast milk is a special source of nutrition that helps improve the survival of high-risk infants, including premature infants, low-birth-weight infants, and infants with illnesses.

Women have the right to enjoy maternity benefits, and the 2019 Labor Law has specific provisions for female employees to perform work suitable for their physical, physiological, and maternal functions. Employers are not allowed to terminate the labor contract of female employees due to marriage, pregnancy, maternity leave, or childcare for children under 12 months old. During pregnancy, maternity leave, and childcare for children under 12 months old, female employees are temporarily exempted from unilateral termination of labor contracts. The time limit for disciplinary actions is extended. Employers are not allowed to use female employees for heavy, dangerous work or exposure to hazardous substances that harm reproductive and childcare functions, according to the list issued by the Ministry of Labor, Invalids and Social Affairs and the Ministry of Health (from Article 135 to Article 142). The Vietnamese Social Insurance Law 2014 specifically regulates maternity benefits for female employees during pregnancy and childbirth, from Article 32 to Article 41. Specifically, during pregnancy, female employees are entitled to 5 days off for prenatal check-ups; if they are far from the medical facility or have a medical condition or abnormal pregnancy, they are entitled to 2 days off for each prenatal check-up. The period of leave for maternity benefits specified in this article is counted in working days, not including holidays, Tet holidays, and weekly days off (Article 32). Female employees are entitled to 6 months of leave for maternity benefits before and after childbirth. In case of giving birth to twins or more, the mother is entitled to an additional 1 month of leave for each additional child. The maximum period of leave for maternity benefits before childbirth is 2 months. 2. Male employees who are

⁶ Hanoi Law University (2020), *Marriage and Family Law syllabus*, Justice Publishers.

paying social insurance when their wives give birth are entitled to leave for maternity benefits (Article 34), the period of leave for adopting foster children (Article 36), and the period of leave for implementing contraceptive measures (Article 37).

The reality of implementing women's reproductive rights

Reproductive rights are fundamental to women so that they can exercise their rights and make essential decisions. First and foremost, women need to be fully aware of these rights. A 2022 study showed that most women surveyed correctly understood the legal provisions regarding their rights and responsibilities regarding childbirth. Specifically, 70.9% of respondents stated that each couple has the right to decide on the timing and spacing of childbirth; 71.1% affirmed that each couple should only have one or two children, except in special circumstances as provided by law; and 74.3% answered that couples are supported with family planning services, including contraceptive methods. Women are interested in learning about legal provisions: 92.9% are concerned about marriage and family law, followed by the 2003 Population Law amended in 2008, which accounts for 55.7%. Most respondents need to pay more attention to specific legal documents, even though these documents provide detailed guidance. Most people learn about legal issues through mass media. A woman's opinion is as follows: *“If I had to read these provisions myself, very few people would do it because of their work. Mainly, I only know about the legal provisions from watching TV. I do not know which documents they are; just a general idea. At the local level, I also see propaganda on banners, slogans about Population and Family Planning, and the consequences of gender imbalance in birth. The government has regulations on the number of children, but couples should base their decisions on their circumstances. It is good if they have the financial means to care for and raise multiple children. The law should not restrict people from having children”* (PVS, 40-year-old woman).

Due to the development of economic and social conditions, giving birth is a significant event, and most families prepare materially and mentally carefully. The state emphasizes maternal and child healthcare information to ensure the implementation of the right to reproduction. Family planning services, screening for congenital abnormalities and congenital disabilities, and gender imbalance control during childbirth are communicated, monitored, and managed for pregnant women until delivery to advise and mobilize participants in screening for congenital abnormalities and congenital disabilities locally. Therefore, couples are very interested in researching information before giving birth: information on reproductive health (94.6%), information on how to care for and nutrition for pregnant women (93.5%), and how to care for and raise children (92.7%). 52.9% of people affirm that they research the horoscope of their spouse, themselves, and their children before giving birth. According to folk beliefs, when giving birth, people look at the horoscope and choose the appropriate year to be reassured about the future and fate of the parents and the child being born. People believe having children born in a good year will make them smarter and healthier. Therefore, choosing a good year to give birth leads to many social consequences. Population statistics show that in the years considered good, the number of children born is about 10% higher than the average number of children born in other years.

The law recognizes equal rights between spouses in all aspects of family life. Spouses have equal rights and obligations in deciding the number of children and caring for and raising children to ensure that children are born receiving the love of both parents to develop their physical and mental health fully. The survey results show that 100% of respondents acknowledge that the law stipulates equal rights between spouses in deciding the number of children. However, when asked who decides the number of children, 85.2% of respondents answered that both husband and wife decide, 6.4% said that the husband decides, 2.8% said that the wife decides, and 5.6% had different opinions (the husband's parents, the wife's parents decide). Therefore, there is still inequality between husband and wife in deciding the number of children in the surveyed sample.

Most women today still desire to have children and small families. The survey results showed that the average number of children is 1.81, and only 3.6% of those surveyed did not want to have children. The trend of having children before the age 35 is well-implemented in the surveyed area and is in line with the recommendations of the law and medical experts. However, there is a gender imbalance in the number of children born, with girls accounting for 47.2% and boys accounting for 52.8% of those surveyed. The decision on the number of children for a couple depends on the gender of the child, and having more children is closely related to having a child of the opposite gender. 30.3% of those surveyed answered that if they have a child of one gender, they will have another with the goal of having a balanced family (with both sons and daughters), accounting for 85.7%; as many as 44.1% of those surveyed said they must have a son to carry on the family name. Thus, the idea of having a son to carry on the family name still exists in the thinking and behavior of couples when it

comes to having children. The traditional belief that a son is necessary to "carry on the family line" has led to an increasing number of boys being born compared to girls, resulting in a gender imbalance. The belief in valuing males over females is still a barrier to the ability of some women to freely and responsibly decide on the number of children and the spacing between them.

Reproductive science and technology are increasingly advanced, and the right of women to have children and decide on the number of children is recognized by Vietnamese law. However, the selection of the sex of a fetus is strictly prohibited in all forms according to the Population Ordinance of 2003. Nevertheless, 34.6% of those surveyed affirmed that they had researched ways to select the sex of their child. Therefore, women may feel pressured to have a son, such as in the case of *"My husband and I have two daughters, but my husband is the eldest son and wants me to have a son. We have gone to the hospital three times to have the embryo implanted after undergoing tests to select sperm and eggs, but it has not worked. Each time I did this, my health deteriorated significantly because I was allergic to anesthesia (as you can see, I now weigh 47 kg even though I used to weigh 51 kg). Nevertheless, my husband does not care if I am healthy, and even after three unsuccessful attempts, he still pressures me to go to the hospital again to try to have a son. I will try again, but if it does not work this time, I will stop trying, even if it means my husband and I will separate."* (PVS, female, 38 years old).

In cases where the husband's family pressures the wife to give birth to a son to carry on the family line, there are other situations: *"My husband and I planned to have only one child because my previous childbirth was very difficult. The first pregnancy was a struggle for me, from conception to delivery. I went through months of anxiety and even risked my life. My husband and I became regular customers of the hospital (as we visited the doctor in February for prenatal check-ups). We married under difficult economic conditions and often borrowed money from friends to pay for the expenses. After our child was born, I evaluated myself as brave enough to overcome those months. However, when my child was three years old, my husband's family frequently created pressure to give birth to a son to carry on the family line, as my husband was the only son. At first, my husband and I agreed not to have another child, but due to the pressure from his family, he initially persuaded me by stating why I had to have another child. We also had medical tests done, but the doctor said I was weak and had poor egg quality, and now I need egg donations for success. It will be hard for me to give birth again, but it might not even be my child; what will happen in the future?"* (PVS, female, 35 years old). Furthermore, they had to choose abortion when they knew the gender of the fetus. This leads to the lives of unborn baby girls being unintentionally taken away while their mother's health is compromised.

According to statistics from the Women's Union, Vietnam has the highest abortion rate among the reproductive age group in Southeast Asia. It is one of the countries with the highest abortion rates globally. On average, each Vietnamese woman has 2.5 abortions in their lifetime⁷. Although the survey results show that 100% of the respondents use contraception, there are still 21.5% of them who have unintentional pregnancies. The interview results also show this: *"I had two abortions. The first time was six months after giving birth because I had a cesarean section, and I was afraid it would affect my health, so I had to have an abortion. Since my first two children were girls, my husband and I wanted to have a son because he was the eldest son. We also sought advice on how to conceive a boy, but after getting pregnant, we found out it was a girl, so I had to have an abortion again, even though I regretted it a lot. However, I had to accept it because of my circumstances."* (PVS, female, 34 years old).

The Vietnamese labor law ensures that female workers have the right to decide the number of children they want and have full rights and responsibilities as workers. At the same time, it also defines the responsibilities of employers to ensure the rights and interests of pregnant and nursing women. However, despite the favorable conditions provided by the law, the average income of workers in Hanoi is 8.5 million VND per person/month, and having children can significantly affect women's economic life. Women are usually the main workers in the family, and their decision to have a child can affect their career, especially at the beginning of their career. Taking six months off work to care for a child can slow their career advancement and lead to missed opportunities in their work. A study shows that having children affects women's employment and learning abilities, with 57.4% indicating a significant impact, while 9.9%, 23.1%, and 9.6% indicating little or no impact, respectively. Taking care of children under the age of five is usually the mother's main responsibility. In contrast, access to public childcare services in Hanoi is limited, with a shortage of schools and classes for a long time without effective solutions. If women continue to work after a six-month maternity leave, the ideal

⁷ The abortion rate in Vietnam is the highest in the region - Vietnam Women's Union Information Portal (hoilhpn.org.vn). www.hoilhpn.org.vn/tin-chi-tiet/-/chi-tiet/ty-le-nao-pha-thai-o-viet-nam-cao-nhat-khu-vuc-15010-201.html

solution is to have grandparents take care of the child. However, if they hire a domestic helper, the cost is equivalent to the average wage of a worker, which can significantly affect the expenses of young families. Therefore, providing public childcare services is still necessary to reduce the burden on women who want to have children and care for young children.

Conclusion

The research on women's reproductive rights indicates that the legal system in Vietnam has always been subject to changes depending on each period in terms of acknowledging and ensuring women's reproductive rights. Women have a fairly comprehensive understanding of reproductive rights according to the law, but there are still differences in legal awareness among different age groups and professions. Regarding the actual implementation of the law on the right to decide the number of children, the research results show that women tend to choose a model with fewer children, and the phenomenon of unintended pregnancy is high even though contraceptive measures have been used. A portion of the population still has the psychological desire to have many children, to give birth in a lucky year, or to have boys. Traditional thinking, which values males over females (having to have a son, giving birth in a lucky year), is still a barrier to deciding freely and responsibly about the number of children and the spacing between them for some women.

On the other hand, this leads to the phenomenon of gender imbalance according to the 2019 population statistics: 111.5 boys/100 girls. The reason is the easy access to prenatal sex selection services, leading to sex-selective abortion or diagnosis and abortion based on gender preferences. Gender selection before birth reflects deep-seated gender inequality and will impact the family structure and future social issues due to the current gender imbalance. The shortage of female children will lead to a shortage of women in all age groups. High rates of abortion and the selection of unsafe and illegal abortion methods affect women's health, life, and maternal rights.

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