

PROTECTING WOMEN'S RIGHTS UNDER THE CURRENT CRIMINAL LAW OF VIETNAM | *PROTEGER OS DIREITOS DAS MULHERES SOB A ATUAL LEI PENAL DO VIETNÃ*PHAM THI ANH DAO
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ABSTRACT | Enhancing women's rights is a crucial matter globally and has been addressed in various legal documents. Vietnam has actively collaborated with the international community to bolster the safeguarding of women's rights within its criminal justice framework. The 2015 Criminal Code of Vietnam underwent significant revisions to ensure the well-being and rights of women. However, certain provisions still require improvement to ensure comprehensive protection. This article thoroughly examines the shortcomings in safeguarding women's rights within Vietnam's criminal law system and proposes measures to enhance the relevant provisions in the 2015 Criminal Code. By refining and expanding regulations, providing stronger support and protection for victims, improving monitoring mechanisms, and ensuring effective enforcement, we can bolster the protection of women's rights in the 2015 Criminal Code. A robust and logical legal system is essential for women to attain maximum rights and safety within society.

KEYWORDS | Women's rights. Criminal law. Vietnam. Legal system.

RESUMO | A melhoria dos direitos das mulheres é uma questão crucial a nível mundial e tem sido abordada em vários documentos legais. O Vietname tem colaborado activamente com a comunidade internacional para reforçar a salvaguarda dos direitos das mulheres no seu quadro de justiça criminal. O Código Penal do Vietname de 2015 passou por revisões significativas para garantir o bem-estar e os direitos das mulheres. No entanto, certas disposições ainda necessitam de melhorias para garantir uma proteção abrangente. Este artigo examina minuciosamente as deficiências na salvaguarda dos direitos das mulheres no sistema de direito penal do Vietname e propõe medidas para melhorar as disposições relevantes do Código Penal de 2015. Ao aperfeiçoar e expandir a regulamentação, proporcionar maior apoio e proteção às vítimas, melhorar os mecanismos de monitorização e garantir uma aplicação eficaz, podemos reforçar a proteção dos direitos das mulheres no Código Penal de 2015. Um sistema jurídico robusto e lógico é essencial para que as mulheres alcancem o máximo de direitos e segurança na sociedade.

PALAVRAS-CHAVE | Direitos das mulheres. Direito Penal. Vietnã. Sistema jurídico.

1. INTRODUCTION

Gender equality is a vital and widely discussed global issue, addressing the entitlement and exercise of women's rights and freedoms across all facets of life (INGLEHART et al., 2003). These encompass fundamental aspects such as equal treatment, decision-making power, and access to education, healthcare, and employment opportunities (WORLD HEALTH ORGANIZATION, 2006). Promoting gender equality is pivotal to upholding women's rights, requiring society to acknowledge and value women without gender-based discrimination (GUTHRIDGE et al., 2022). Women should be recognized as full-fledged citizens with rights and responsibilities, empowered and unrestricted in their participation across various domains, including politics, the economy, society, and the family unit.

The principle of self-determination holds immense significance for safeguarding women's rights (MCCORQUODALE, 1994). It grants women the autonomy to make choices regarding marriage, reproduction, and control over their bodies and well-being. Self-determination encompasses freedom from violence, access to information and education, and active involvement in political and social decision-making (PETERS, WOLPER, 2018).

Equitable access to education, healthcare, and employment further contributes to the advancement of women's rights. Women deserve equal opportunities to acquire quality education, pursue personal growth, and avail themselves of comprehensive healthcare services, including maternal and reproductive health care. Fair and unbiased access to employment opportunities is also pivotal in enabling women's economic participation and valuable contributions to society. However, the reality is that women's rights continue to face numerous challenges and inequalities. Discrimination, domestic and sexual violence, limitations on self-determination, and barriers to education and employment persist for women. Achieving genuine women's rights necessitates concerted efforts from governments, society, and individuals alike.

Vietnam has implemented robust measures in the 2015 Criminal Code¹ to protect women's rights. The Code addresses offenses against women and imposes severe penalties to deter acts that violate their rights. It establishes a framework based on principles of equality, eliminating discriminatory or restrictive elements. The provisions concerning criminal responsibility and penalties also establish a uniform standard for safeguarding women's rights. However, despite these protective measures, outstanding issues remain that require further attention and improvement. Therefore, it is essential to conduct additional research and enhance the current situation.

Vietnam's current criminal law contains regulations designed to protect women's rights. However, there has been an increase in crimes such as sexual abuse, domestic violence, trafficking of women, and offenses against pregnant women, which have become more complex. Various acts that gravely violate women's rights, such as gender-based abortion or sexual harassment, often go unpunished. Subjective and objective factors influence this situation, with the limitations of the provisions in the 2015 Criminal Code playing a significant role. Consequently, investing in research to refine regulations and propose solutions to improve the effectiveness of law enforcement is necessary to protect women's rights. In this article, we thoroughly examine the protection of women's rights within Vietnam's criminal law system and propose several ways to enhance the provisions safeguarding women's rights under the current Criminal Code.

2. METHOD

In this study, we conducted a comprehensive analysis of the existing legal framework concerning women's rights in the 2015 Criminal Code of Vietnam. This involved a meticulous examination of the laws, regulations, and provisions to identify areas where women's rights might not be fully protected or areas that require improvement. Through a thorough evaluation of the legal

¹ The 2015 Criminal Code is amended and supplemented by Law No. 12/2017/QH14 and takes effect from January 1, 2018, according to Resolution No. 41/2017/QH14.

language and provisions, we highlighted specific shortcomings and successes in ensuring the protection of women's rights. Furthermore, we conducted comparative studies between Vietnam's legal framework and the laws of other countries, as well as international standards. This allowed us to assess the level of protection afforded to women in Vietnam in comparison to global best practices. Lastly, we proposed potential amendments and improvements to better safeguard women's rights in Vietnam's Criminal Code.

3. THE CONCEPT AND THE NEED TO PROTECT WOMEN'S RIGHTS THROUGH CRIMINAL LAW

Despite constituting more than half of the population, women often find themselves in a vulnerable position, facing significant disadvantages. They bear the brunt of deficiencies in crucial areas such as food, healthcare, education, training, employment opportunities, and other basic necessities (REILLY, 2009). Their rights to life, freedom, personal security, and even leading a healthy life are frequently violated. Therefore, it is imperative to address and further clarify the issue of protecting women's rights alongside the acknowledgment of these rights.

After centuries of struggle, women's rights are now universally recognized and valued (BUNCH, 2017). Numerous international documents and legal texts have identified and elevated women's rights as a responsibility of global civilization. The legal acknowledgment of women's rights signifies the recognition of women's role in society, marking a significant milestone in the broader pursuit of human liberation, with a particular focus on women's liberation.

Within the realm of legal science, the concept of protecting women's rights lacks a clear-cut definition but is predominantly approached through specific protective methods and approaches. Various approaches exist to elucidate this concept. According to the Vietnamese dictionary, protection is defined as resistance against encroachment. Based on this definition, the

protection of women's rights can be understood as the deliberate actions taken by specific entities to oppose any violation of women's human rights as recognized by national and international laws.

We identify the following distinct characteristics pertaining to the protection of women's rights:

- Firstly, the subject of protecting women's rights. Women's rights emerge within specific historical contexts due to the historical development and revolutionary struggles for women's liberation, aimed at combating gender discrimination and advocating for global gender equality. Consequently, as society becomes more cognizant of women's rights, the imperative to protect these rights arises. Protecting women's rights is an objective endeavor that individuals, organizations, or nations can undertake. However, on an international scale, protecting women's rights transcends the isolated actions of particular entities and necessitates the collective responsibility of the entire community.

- Secondly, the object of protecting women's rights. The object of such protection is the human rights of women, which are recognized in international and national legal instruments.

- Thirdly, the actions involved in protecting women's rights. These actions encompass various methods employed to counteract violations of women's rights. For individuals, two common methods of protecting their rights are self-protection and seeking assistance from relevant authorities or organizations. Different entities may adopt diverse approaches to protecting women's rights (e.g., an individual woman may employ the aforementioned measures to safeguard her rights). However, for special entities like the international community or a nation, the selection of appropriate methods for protecting women's rights holds significant importance in ensuring the effectiveness of protective actions.

Consequently, numerous approaches exist for protecting human rights, but one vital and indispensable method is protecting human rights through the law. Therefore, to safeguard human rights as a whole, and specifically women's

rights, it is crucial to understand the legal acknowledgment of human rights and ensure their actualization. On the other hand, as women constitute a special social group and a marginalized group in society, women's rights must be considered and recognized based on the foundation of gender equality.

Therefore, the protection of women's rights, along with the broader protection of human rights, necessitates the crucial role of the State. The State acknowledges human rights, including women's rights, and ensures their implementation. The law serves as an exceptionally effective means of safeguarding human rights in general and women's rights in particular. Protecting women's rights through the law entails the recognition of women's human rights within legal frameworks and ensuring their practical realization through specific sanctions. As the law is enforced through State power, protecting women's rights through legal means currently stands as the most widely utilized and effective method worldwide.

4. METHODS OF PROTECTING WOMEN'S RIGHTS THROUGH CRIMINAL LAW

While women's rights possess distinct gender-specific characteristics, they fundamentally fall within the realm of human rights and are an integral part of the broader human rights framework. Therefore, the methods and measures that exemplify the recognition and protection of human rights within the legal system, as outlined below, are equally applicable to the protection of women's rights:

Firstly, it is imperative to establish clear and comprehensive recognition of all conceivable human rights. Doing so ensures that individuals are fully aware of their rights, can exercise them, and can promptly address any violations perpetrated by any entity. Secondly, proactive measures must be taken to prevent potential human rights violations by the most influential entity (i.e., the State). In the event of rights violations, mechanisms should be in place

to hold the violating entities accountable, restore the infringed rights, and underline the State's obligation and responsibility to protect human rights.

Consequently, the law, as a whole, safeguards human rights through the following measures: (1) Officially recognizing and completely acknowledging human rights; (2) Establishing mechanisms to prevent human rights violations by all types of entities; (3) Defining sanctions applicable to entities that violate human rights; (4) Providing compensation measures and restoring the losses caused by human rights violations; and (5) Entrusting the responsibility of protecting human rights to the State. As a branch of law within the legal system, criminal law's methods of protecting human rights, including women's rights, are interconnected with these measures and are not separate from them.

Furthermore, the protection of women's rights, while a part of safeguarding human rights through criminal law, specifically addresses the gender-specific aspect of the protected individuals. Therefore, protecting women's rights through criminal law employs the same methods used to protect human rights in general while accounting for and aligning with the gender-specific nature of women. In this context, criminal law safeguards women's rights through the following methods: (1) Criminalizing and imposing penalties for acts that violate women's rights; (2) Identifying as criminal offenses actions that restrict women's rights; and (3) Ensuring an appropriate system of penalties based on criteria associated with women's rights.

Criminal law uses a coordinated approach to comprehensively protect women's rights, addressing both criminal acts and aspects related to the development of criminal law. The effectiveness of safeguarding women's rights through criminal law can only be maximized when these methods are translated into well-crafted legal norms closely aligned with objective realities, respected, and rigorously enforced. This entails ensuring that the legal framework accurately reflects the complexities of protecting women's rights and is responsive to the evolving needs and challenges women face.

5. INTERNATIONAL STANDARDS FOR PROTECTING WOMEN'S RIGHTS THROUGH CRIMINAL LAW

As a fundamental human rights concept, women's rights hold universal significance and are universally acknowledged by humanity (GEDDES, LUECK, 2002). Therefore, adhering to the criteria and standards established by international law in relation to women's rights is essential to protecting women's rights through national legislation, including criminal law. One of the most significant international human rights laws states, "Member states of the United Nations Charter have an obligation to globally respect and uphold the human rights and freedoms of individuals" (UNITED NATIONS, 1949).

As human beings, women possess all the human rights recognized by international law for individuals. However, in addition to the general recognition and requirements for protecting human rights, international law also imposes specific obligations to emphasize the protection of certain human rights that hold particular importance and vulnerability for women. These encompass gender-specific human rights, such as the right to fulfill maternal roles and receive special protection in relation to this role, gender equality, sexual autonomy and safety, personal liberty and security, and the right to marry.

Gender equality: Gender equality refers to equal standing and opportunities for both men and women to utilize their capabilities in contributing to community and family development and enjoying the benefits of such progress (WORLD HEALTH ORGANIZATION, 2006). This principle holds immense significance and is universally recognized as a cornerstone of human rights in all key international legal instruments.

Gender equality serves as the foundation for individuals to exercise other fundamental human rights. Within its opening statements, the United Nations Charter affirms the belief in fundamental human rights, inherent dignity, the value of each individual, and the importance of gender equality. The Universal Declaration of Human Rights emphasizes the rejection of discrimination and asserts in its initial articles that "all human beings are born free and equal in dignity and rights" and are entitled to all the rights and

freedoms outlined in the Declaration without any distinction, including gender. Furthermore, the Convention against Discrimination in Education, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights of 1966 all require member states to ensure gender equality in the enjoyment of all political, civil, economic, social, and cultural rights.

However, recognizing the existing imbalances that favor women, international law has developed additional specialized instruments to ensure gender equality for women. Examples of such instruments include the Equal Remuneration Convention of 1951², the Convention on the Political Rights of Women of 1952³, the Declaration on the Elimination of Discrimination against Women of 1967⁴, and the Convention on the Elimination of All Forms of Discrimination against Women of 1979⁵.

Freedom and safety in sexual matters: While there is no official legal definition of this right, it encompasses the freedom to exercise individual autonomy in engaging in sexual activities to fulfill one's physiological needs while preserving health and dignity (CORNELL, 1998). While everyone has the right to freedom and safety in sexual matters, the reality is that women are often the primary victims of sexual abuse due to biological factors (DESHPANDE, NOUR, 2013). Throughout history, the majority of sexual assault victims have been women, leading early 20th-century international legal instruments to primarily address the protection of this right for women. For instance, an

2 The Equal Remuneration Convention (No. 100) was formally adopted in 1951 and entered into force in May 1953. The Convention focuses on gender discrimination in employment and outlines principles for the equal remuneration for work of equal value independent of whether it is performed by men or women.

3 The Convention on the Political Rights of Women was opened for signature pursuant to resolution 640 (VII),¹ adopted by the General Assembly of the United Nations on 20 December 1952.

4 Declaration on the Elimination of Discrimination against Women was adopted by the General Assembly on 7 November 1967. The Declaration was an important precursor to the legally binding 1979 Convention on the Elimination of All Forms of Discrimination Against Women.

5 The Convention on the Elimination of all Forms of Discrimination Against Women is an international treaty adopted in 1979 by the United Nations General Assembly. Described as an international bill of rights for women, it was instituted on 3 September 1981 and has been ratified by 189 states.

international convention aimed at combating the trafficking of women for forced prostitution was adopted on May 18, 1904⁶.

In the complex evolution of modern society, although the occurrence of men being victims of sexual harassment has increased, the evidence demonstrates that women and young girls remain the primary victims whose freedom and safety in sexual matters are violated. Consequently, the United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others in 1949 emphasizes the protection of women and children from condemned acts⁷. The Declaration on the Elimination of Violence against Women in 1993 also underscores sexual assault as a significant form of violence against women that necessitates eradication⁸.

To protect women's dignity, freedom, and safety in sexual matters, international law mandates countries to undertake various measures, including legislative actions, to eliminate all forms of trafficking and exploitation of women in prostitution. It calls for condemning and eradicating all forms of violence against women, including sexual violence. Countries are further required to criminalize acts such as trafficking, exploitation, and forced prostitution of women and to impose penalties on those who satisfy the sexual desires of others by (1) procuring, enticing, or leading another person into prostitution, even with their consent, and (2) exploiting others in prostitution, even with their consent.

Freedom and personal security: Freedom and personal security are fundamental rights inherent to individuals, reflecting their existential state and legally safeguarding them from any infringement upon their life, health, honor, dignity, and bodily integrity. This right universally applies to all individuals, as enshrined in the Universal Declaration of Human Rights, which proclaims, "Everyone has the right to life, liberty, and security of person⁹." Hence, both

6 The International Agreement for the Suppression of the White Slave Traffic (also known as the White Slave Convention) is a series of anti-human trafficking treaties, specifically aimed at the illegal trade of white humans, the first of which was first negotiated in Paris in 1904.

7 Articles 16 and 20 of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

8 Article 2 of the Declaration on the Elimination of Violence against Women.

9 Article 3 of the Universal Declaration of Human Rights.

men and women possess the right to freedom and the inviolability of their bodies, health, and dignity.

However, recognizing the elevated risk of harm to women's freedom and personal security, even predating the adoption of the United Nations Charter and foundational international human rights laws, international legal instruments have emphasized protecting women's freedom. Notable examples include the International Convention for the Suppression of the Traffic in Women and Children on September 30, 1921, and the International Convention for the Suppression of the Traffic in Women of Full Age on October 11, 1933. Following the establishment of international laws on basic human rights, international law continues to reinforce the protection of this right. For instance, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others in 1949 and the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime in 2000, both uphold the protection of this right.

Right to Freedom of Marriage: The right to freedom of marriage encompasses the human entitlement to marry and establish a family based on consent, provided that legal requirements are met (WASHBURN, 2015). It is a cherished human right that ensures personal happiness and serves as a cornerstone for constructing a harmonious society. This right was initially recognized in Article 16 of the Universal Declaration of Human Rights. It stipulates that individuals, regardless of race, nationality, or religion, have the right to marry and form a family. They are entitled to equal rights in marriage, during the marriage, and in the event of its dissolution. Moreover, marriage should only be entered into with the free and full consent of both intending spouses.

This provision was reaffirmed in Article 1 of the Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages in 1962. It emphasizes that every marriage should only be solemnized with the voluntary and complete consent of the prospective spouses, and the minimum age for marriage should be 18 years. This right is further reiterated in Article 23 of the

International Covenant on Civil and Political Rights and Article 10 of the International Covenant on Economic, Social, and Cultural Rights, both adopted in 1966.

Building upon the framework of protecting human rights in general, international law sets forth specific obligations to safeguard certain rights that hold great importance and vulnerability for women. To ensure adherence to and enforcement of international legal requirements in protecting women's rights, these specific demands should serve as benchmarks and standards for developing and enhancing regulations to protect women's rights within Vietnam's criminal law.

6. PROVISIONS PROTECTING WOMEN'S RIGHTS UNDER THE CURRENT VIETNAMESE CRIMINAL LAW

Recognizing the limitations in protecting women's rights in the 1999 Criminal Code¹⁰ and acknowledging the importance of the issue, Vietnamese legislators made several amendments when drafting the 2015 Criminal Code. The National Assembly of Vietnam approved the 2015 Criminal Code on November 27, 2015 (amended and supplemented in 2017), introducing significant reforms to protect women's rights. These reforms are outlined as follows.

The new Code explicitly acknowledges the universally protected nature of women's rights concerning criminal law. Unlike the 1999 Criminal Code, which identified women's rights within specific provisions on legal responsibilities and the definition of crimes, the 2015 Criminal Code recognizes that its primary objective is to protect national sovereignty, ensure the country's security, safeguard the socialist regime, and protect human rights and citizens' rights¹¹. Consequently, the rights of women are safeguarded by criminal law as the rights of all individuals who identify as female, regardless of their nationality.

Similarly, in accordance with the purpose of the law, human rights, including

10 The 1999 Criminal Code was formally adopted by Law No. 15/1999/QH10 on 21 December 1999.

11 Article 1 of the 2015 Criminal Code of Vietnam.

women's rights, are recognized as the subjects of crimes—social relations protected by criminal law¹². Furthermore, specific chapters within the Criminal Code acknowledge these rights and freedoms as human rights¹³.

To enhance the protection of women's maternity function, the 2015 Criminal Code introduced various amendments to address the shortcomings of the 1999 Criminal Code. Firstly, the 2015 Criminal Code employs consistent terminology when addressing the pregnancy status of women. Instead of the ambiguous language used in the 1999 Criminal Code, all provisions relating to the condition of women utilize the term "pregnant." While the inconsistent use of terminology in the previous Code does not necessarily lead to different interpretations when applied, it is important from a technical perspective to maintain a uniform and precise textual form of the law.

Secondly, the 2015 Criminal Code significantly broadens the application and establishes a more reasonable approach to the aggravating circumstance of committing crimes against women known to be pregnant. The new Code introduces the application of this aggravating circumstance to a wider range of violent offenses that pose risks to the life, health, or pregnancy of women. In addition to the offenses to which this provision already applied under the 1999 Criminal Code (e.g., murder, intentional injury or harm to health, torture, organizing illegal drug use, coercion, and enticing others into using illegal drugs), the 2015 Criminal Code applies it to the following offenses as well: killing someone while performing official duties (Article 127); manslaughter (Article 130); causing injury or harm to others' health while performing official duties (Article 137); transmitting HIV to others (Article 148); intentionally transmitting HIV to others (Article 149); unlawful detention or confinement of individuals (Article 157); forcing officials or employees to resign or unlawfully terminate workers (Article 162); robbery (Article 168); misappropriation of property (Article 170); snatch theft (Article 171); mistreatment or abuse of grandparents, parents, spouses, children, grandchildren, or caretakers (Article 185); forced labor (Article 272); kidnapping (Article 301); rendering unlawful

12 Article 8(1) of the 2015 Criminal Code of Vietnam.

13 Chapters XIV and XV of the 2015 Criminal Code of Vietnam.

judgments (Article 370); rendering unlawful decisions (Article 371); using degrading forms of punishment (Article 373); forced prostitution (Article 374); abuse of power or authority to unlawfully detain or imprison individuals (Article 377). These provisions reflect a policy of enhancing protection for the maternity function.

The application of the aggravating circumstance of “committing a crime against a woman known to be pregnant” in the new Criminal Code is fairer and more rational compared to the previous Code. Under the new Code, the offender must have subjective awareness of the victim’s pregnancy for the provision to apply to all relevant offenses. The increased penalty framework is only invoked when the offender is aware of the victim’s pregnancy. In cases where the offender is unaware of this circumstance, the framework still applies as a general increase in criminal liability.

Thirdly, the new Criminal Code has criminalized the act of organizing surrogacy for commercial purposes. As analyzed, commercial surrogacy is a form of business involving women’s bodies, commodifying their dignity, and forcing the surrogate mother into involuntary motherhood¹⁴. The legislator has established two penalty frameworks for this new offense: fines plus non-custodial reform or imprisonment. The maximum fine is 200 million VND, the maximum non-custodial reform is up to two years, and the maximum imprisonment is up to five years. Aggravating circumstances apply in cases where the offense is committed against two or more individuals, when the offense is repeated twice or more, or when the offense is considered dangerous recidivism. In addition, the offender may be prohibited from holding a position, engaging in certain professions, or performing specific work for 1–5 years. Given the nature of this economically motivated crime, these are reasonable penalties and punitive measures aimed at preventing recidivism.

Fourthly, the new Criminal Code has imposed stricter penalties for offenses that violate maternity rights in the field of labor, addressing the need for special protection of this right. According to Article 128 of the 1999 Criminal

¹⁴ Article 187 of the 2015 Criminal Code stipulates that this behavior is a crime.

Code, the unlawful termination of employment or the coerced resignation of female workers, officials, or civil servants during pregnancy or while caring for young children was punishable by a maximum sentence of only one year in prison, similar to other cases of unlawful termination for regular workers (even when aggravated circumstances could be applied to offenses against pregnant women). This penalty is insufficient in terms of deterrence, inadequate in proportion to the gravity of the crime, and fails to reflect the special protective policy for women in the period of maternity and childcare. The 2015 Criminal Code addressed this deficiency by introducing an additional aggravating penalty framework for the offense of forcing the resignation or unlawful termination of employment of workers in cases of offenses “against pregnant women” and “against persons caring for children under 12 months old”¹⁵. In these cases, the offender may face a maximum sentence of three years in prison (the basic penalty framework remains unchanged from the 1999 Criminal Code, which was up to one year in prison). This new provision demonstrates a strong emphasis on special protective policies in labor to ensure the economic conditions for fulfilling women’s maternal duties.

Fifthly, with the introduction of provisions on conditional early release, the new Criminal Code has implemented a priority policy to create favorable conditions for women to fulfill their maternal duties. The 2015 Criminal Code stipulates the conditions for prisoners to be granted conditional early release, including provisions prioritizing women caring for children under 36 months old concerning the time served in their sentences¹⁶. Accordingly, the conditions regarding the time served for women caring for children under 36 months old and certain other prioritized individuals are at least one-third of the sentence for fixed-term imprisonment and 12 years for life imprisonment, while regular individuals must meet the condition of serving at least one-half of the sentence for fixed-term imprisonment and 15 years for life imprisonment. This provision has contributed to aligning the penal system of the Criminal Code with the special protective regime for maternal duties within the general standards of women’s rights.

15 Points b and c, Paragraph 2, Article 162 of the 2015 Criminal Code of Vietnam.

16 Paragraph 1, Article 66 of the 2015 Criminal Code of Vietnam.

To protect the personal freedom and security of women, the new Criminal Code has improved provisions on human trafficking with specific descriptions of the constituent elements. The 1999 Criminal Code only stipulated the offense of trafficking in women and the corresponding penalties¹⁷, which was later amended to the offense of human trafficking (in 2009) but still lacked specific descriptions. As analyzed, this made it difficult to determine the elements of the crime and led to the omission of many forms of trafficking as defined by international legal instruments and relevant national laws. To address this, the 2015 Criminal Code describes the various forms of conduct constituting the offense of human trafficking¹⁸.

In addition to improving provisions on human trafficking, the new Code introduced an additional element that emphasizes the significance of gender in the offense of intentionally causing injury or harm to the health of others. This element is “Using sulfuric acid or other hazardous chemicals to cause injury or harm to the health of others”¹⁹. Besides the physical harm caused, this criminal act also severely damages the victim’s physical appearance. As mentioned earlier, for women, the destruction of one’s appearance is particularly distressing and unfortunate. Therefore, the 2015 Criminal Code stipulates that the use of sulfuric acid or other hazardous chemicals to cause injury or harm to the health of others is an aggravating circumstance if the resulting disability does not reach the threshold for criminal liability (11%), and it is a determining factor for increased punishment if the resulting disability meets the threshold for criminal liability.

In protecting the rights to sexual freedom and safety, the 2015 Criminal Code has undergone reforms that reflect a deeper and more practical understanding of women’s rights. As discussed above, the 1999 Criminal Code only recognized sexual intercourse as the objective element of rape and sexual assault offenses. This was a deficiency as it failed to prioritize the protection of women’s physical and mental integrity and their autonomy in sexual matters. Additionally, it did not accurately reflect the increasing trend of deviant sexual

¹⁷ Article 119 of the 1999 Criminal Code of Vietnam.

¹⁸ Paragraph 1, Article 150 of the 2015 Criminal Code of Vietnam.

¹⁹ Point b, Paragraph 1, Article 134 of the 2015 Criminal Code of Vietnam.

behaviors in criminal acts. Addressing these shortcomings, the 2015 Criminal Code acknowledges that, alongside sexual intercourse, “other sexual acts” constitute the offenses of rape and sexual assault²⁰.

Therefore, in developing the 2015 Criminal Code, Vietnamese legislators have made significant positive reforms to protect women’s rights through criminal law. However, among the limitations identified in the 1999 Criminal Code, the new Code has fully rectified some and partially addressed others while leaving limitations that have not received sufficient attention or improvement.

7. FURTHER IMPROVEMENTS NEEDED TO PROTECT WOMEN’S RIGHTS UNDER THE CURRENT VIETNAMESE CRIMINAL LAW

The analysis above reveals that despite significant progress in protecting women’s rights, the 2015 Criminal Code maintains some of the deficiencies observed in the 1999 Criminal Code and needs further improvement.

Firstly, the 2015 Criminal Code still inadequately applies aggravating circumstances to offenses against pregnant women. Although it has introduced the application of aggravating circumstances to enhance the penalties for most violent offenses that pose a risk to the life, health, or negative impact on pregnant women, it overlooks the offenses of rape and sexual assault. Rape and sexual assault encompass all the aforementioned characteristics, and committing these acts against pregnant women demonstrates extreme inhumanity and brutality. However, the 2015 Criminal Code does not consider this an aggravating circumstance for these crimes. The fact that the victim of rape or sexual assault is a pregnant woman is only considered a general aggravating circumstance under the category of “offense against pregnant women.” This means that perpetrators who are aware of their victim’s pregnancy but still commit rape or sexual assault receive the same punishment

²⁰ Articles from 141 to 144 of the 2015 Criminal Code of Vietnam.

as those unaware of this fact, despite the inherently more heinous nature of their actions.

Secondly, the 2015 Criminal Code still maintains a deficiency inherited from the 1999 Criminal Code by failing to recognize the circumstance of causing the victim to have an abortion as a separate aggravating circumstance for sexual crimes. As previously pointed out, sexual violence against pregnant women carries a clear risk of causing abortion. Abortion inflicted upon women results in severe psychological harm to the victims and their loved ones, and it can also lead to diminished or lost reproductive capabilities in the future. While recognizing the victim's being pregnant as an aggravating circumstance for sexual crimes, it is unreasonable not to acknowledge a similar position for the circumstance of causing the victim to have an abortion.

Thirdly, the 2015 Criminal Code still lacks strict regulations on the offense of illegal abortion. Article 316 of this Code, which governs illegal abortion, has been amended from Article 243 of the 1999 Criminal Code. However, the amendments only clarify the basis for imposing penalties without clearly defining the elements of the crime. As a result, the law does not specify whether only the act of abortion performed by unauthorized individuals or at unauthorized medical facilities (without permission or illegally) constitutes the offense or if any abortion performed without ensuring proper procedures and professional standards also falls under this offense.

Fourthly, the 2015 Criminal Code still does not criminalize the act of sexual harassment. As mentioned earlier, this behavior infringes upon sexual freedom and privacy and tramples upon the dignity of individuals, which international and national laws strictly prohibit. The severity of this behavior has been observed in our country, yet the 2015 Criminal Code, like the 1999 Criminal Code, has not criminalized this act. Additionally, the offense of "rape" cannot be applied to prosecute cases of adult sexual harassment, as Article 146 of the Criminal Code still only addresses "rape" involving individuals under the age of 16, similar to how Article 116 of the 1999 Criminal Code addressed "rape" involving children.

Fifthly, despite criminalizing the act of commercial surrogacy, the 2015 Criminal Code still lacks appropriate measures to address the particularly

serious nature of the offense, which is the forcible surrogacy for commercial purposes. Forcible surrogacy is a grave violation of women's rights, safety, and human dignity. It compels women to fulfill the duty of motherhood against their will, subjects them to health risks, and, most importantly, constitutes a form of exploitation that degrades their human worth by treating their bodies as mere "money-making machines." This case is far more dangerous than commercial surrogacy, where the surrogate willingly agrees to participate. If forced prostitution incurs stricter penalties for the offense of prostitution, similarly, forcibly compelling women to act as surrogates should also face significantly harsher punishment.

Sixthly, the 2015 Criminal Code still lacks measures to prevent gender-based abortion. The offense of illegal abortion under Article 316 falls under the chapter on offenses against public safety and public order. Therefore, it aims to regulate violations of State regulations regarding authority and conditions for carrying out abortions to ensure the safety of pregnant women rather than protecting the right to life of the fetus. Gender-based abortion is an act that deprives individuals of their right to life based on their gender, which has a different nature and does not fall under the category of offenses against public safety.

Therefore, despite significant progress, the 2015 Criminal Code still has many shortcomings in protecting women's rights. The 2015 Criminal Code, therefore, requires additional reforms with specific orientations and proposed solutions as follows.

8. PROPOSED REFORMS TO PROTECT WOMEN'S RIGHTS UNDER THE CURRENT VIETNAMESE CRIMINAL LAW

The 2015 Criminal Code was enacted to replace the 1999 Criminal Code and has made significant progress in protecting women's rights. However, the new Code still maintains some limitations of the old Code, which can be addressed with the following approaches:

Firstly, include the elements “committing the offense against a pregnant woman” and “committing the offense causing the victim to have an abortion” as aggravating circumstances in cases of rape and sexual assault. These cases are as severe as incestuous rape or causing the victim to become pregnant. Therefore, rape and sexual assault against pregnant women and rape and sexual assault resulting in abortion should be subjected to the same penalties.

Secondly, amend the provisions regarding illegal abortion to violations of regulations on safe abortion and clarify the corresponding elements of the offense. This offense relates to violations of state regulations on abortion, including all cases where abortion is performed by unauthorized individuals, in unauthorized facilities, or without meeting professional requirements, resulting in harm to the life and health of the person undergoing the abortion.

Thirdly, criminalize the act of sexual harassment or amend the offense of statutory rape to also apply in cases of sexual harassment against adult victims.

Fourthly, criminalize the act of coercing surrogate pregnancy for commercial purposes or consider it an aggravating circumstance in the offense of organizing surrogate pregnancy for commercial purposes.

Fifthly, criminalize the act of gender-based abortion. However, preventing gender-based abortion through criminal law, if not implemented with a rigorous and rational approach, may face obstacles, such as the difficulty of proving the offense in practice, the unfairness of disregarding other cases of arbitrary and inhumane abortion, potential conflicts with women’s rights and freedoms, family planning policies, or becoming an unreasonable hindrance in cases where abortion is necessary for humanitarian reasons. It could even contribute to the rise of illegal abortions, posing threats to the life and health of pregnant women.

9. CONCLUSION

We have provided a comprehensive overview of completed and ongoing aspects of protecting women's rights. We have also proposed several ways to enhance the provisions for safeguarding women's rights within Vietnam's current criminal law. To foster a deeper understanding of women's rights within society and the legal system, it is imperative to ensure fairness and respect in the treatment of women during legal proceedings. Promoting women's autonomy and participation in investigative, judicial, and decision-making processes is also essential. It is equally important to regularly update and implement international regulations on women's rights that Vietnam has ratified, ensuring legal accountability for violations against women's rights and strengthening preventive measures. Overall, this article has laid the groundwork for understanding and improving the protection of women's rights within Vietnam's criminal law system. These efforts contribute to advancing justice and the rightful recognition of women's rights in society and the legal system.

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