

# Principles of gender equality in the 1946 constitution – the value of the time and the foundation for the constitutional history of Vietnam

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## Abstract

Gender equality is one of the seventeen United Nation sustainable development objectives for the period 2015-2030. This is also one of the criteria for assessing a nation's democracy, justice, and civilization level and is one of the social equality issues. Trace back to the constitutional history of Vietnam, we proudly notice that the issues were acknowledged in the country's first Constitution, the 1946 Constitution. The Constitution not only clarified the value of the time but it also laid the foundation for the construction of the Vietnamese Constitution in terms of gender equality. By historical methods and logical methods, the author focuses on clarifying the value of the time and the legal basis of the 1946 Constitution in terms of gender equality. With the social relations approach, quantitative methods, the author has generalized the gender equality policy implementation process in Vietnam. This article presents some policy and implementation recommendations for the gender equality plan in Vietnam today, which is based on scientific evidence.

**Keywords:** Gender, Gender equality, 1946 Constitution, constitution history.

## I. INTRODUCTION

G.D Anderson who is an Australian writer as well as a social activist is famous for her words: Feminism isn't about making women stronger, women are already strong, it's about changing the way the world perceives that strength. The strength of a woman that Anderson promoted was likely the mentally strength, the will to overcome hardship, aspiration to have their value confirmed and to devote themselves to their social, national, and ethnic communities. This perception can be traced back to the reality of human history, women in many parts of the world have persistently fought in many forms and ways to change the gender stereotypes.

Vietnam is a country with an agricultural civilization. Parallel to that, Mother God-dess

worship has been a long-standing belief in the national culture. Therefore, despite the influence of the Male chauvinism, Vietnamese women have held a certain status in society throughout history. Vietnamese people are proud of their history of national defense and images of Ba Trung, Ba Trieu, Bui Thi Xuan, Nguyen Thi Dinh, Nguyen Thi Binh... have been engraved on their mind. Those are the individuals who have contributed to G.D. Anderson's words – women are already strong.

Since when did gender equality receive recognition from the Constitution and laws in terms of economy, politics, culture and society? In comparison with nations of the world, whether if that acknowledgment was early or late? In Constitutional history of Vietnam, the answer to that question is in the first

Constitution – the 1946 Constitution. In this article, the author also discusses the existing gender equality issue and offers some policy and implementation ideas for a gender equality plan in Vietnam.

## 2. Methods

As a topic which is mainly approached by historical perspective, however, is studied with two methods: the historical methods and the logical methods. The author re-constructs the problem of gender equality in Vietnam's constitutional history by using historical methods. In order to do objective assessments, the author carefully puts this topic in the social context of the region and the world. With logical method, the research has made comparison between the 1959, 1980, 1992 and 2013 Constitutions to identify the inheritance and novelty points of the 1946 Constitution where the gender equality issues were mentioned.

To assess the execution of Vietnam's gender equality policy, this research applies some sociology research methods. The social relations approach in the research of Kabeer and Subrahmanian must be mentioned in this article. Kabeer has identified five aspects of institutional social relations which are especially relevant to gender analysis. Additionally, the research also applied quantitative methodologies to analyze the quantitative data which was provided by the specialized agencies.

These methods assist identify the problems which are existing in the institutionalization and implementation of gender equality plan in Vietnam. That is the foundation for the recommendations that the author has proposed in this research.

## 3. Results

### 3.1. The Value of The Time of The 1946 Constitution of Vietnam on Gender Equality Issues

After the victory of the August Revolution in 1945 and the establishment of the Government of the Democratic Republic of Vietnam, the Government passed No. 14 Decree on September 8, 1945 which was about the Congressional election. It stated that: All Vietnamese people who aged 18 years and over had the right to vote and become candidates, excluding those who were denied their rights or those with abnormal minds [1]. The General Election on January 6, 1946, as a result of this policy, was a proud milestone in the fight for women's liberation and human freedom in Vietnamese history which implied that Vietnamese women having equal rights to men. In both candidacy and election activities, Vietnamese women and other women in countries with contemporary democratic, civilized, and advanced legal systems stood shoulder to shoulder.

On March 2, 1946, the Vietnam National Assembly deputies met at the Hanoi Opera House. At the meeting, the National Assembly formally recognized the Government of The Coalition of Resistance which was led by Ho Chi Minh as President. The new Government approved Decree No. 34/SL which was about the establishment of the Constitution Drafting Committee. The Constitution which was introduced by the National Assembly of Vietnam on November 9, 1946, contained 7 chapters and 70 articles and proclaimed the country's national and democratic nature of the Democratic Republic of Vietnam. According to the 1946 Constitution, Vietnam was a unified nation with the Parliament as the highest state authority and the Government as the primary administrative body. The President had ultimate authority over the nation management, as well as citizens' rights and obligations. The phrase "all Vietnamese citizens" was repeated several times in articles of the 1946 Constitution, which declared the equal rights for men and women in politics, business, culture, and society.

Having mentioned in the "Introduction", "Unity of the people without the distinction of race, girl, class and religion" is one of the principles for the Constitutional establishment

of the Democratic Republic of Vietnam [2] (pp. 8).

Article 1 of the 1946 Constitution stated that “All authority in the country belongs to all Vietnamese people, regardless of race, male or female, rich or poor, class, religion” [2] (pp. 8).

In Chapter II – Citizens' Rights and Obligations, gender equality was emphasized: All Vietnamese people have equal rights in politics, economy, and culture (Article 6). Women, in particular, have equal rights to males in all aspects (Article 9) [2] (pp. 9).

Political equality is one of the civil rights that women in many parts of the world have had to fight for. In Vietnam, however, the Government of the Democratic Republic of Vietnam declared that all Vietnamese citizens, aged 18 and over, regardless of gender, have the right to vote, excluding those who lost their minds or rights [2] (pp. 11) in the first Constitution.

Take a look at Vietnam's history, before the establishment of the Democratic Republic of Vietnam, Vietnam have been suffered the feudalism for thousands of years. Women were not only denied equal legal rights to men, but they were also subjected to the concept of “three obediences, four virtues”. Therefore, the provisions of the 1946 Constitution represented a significant turning point in the legal status of Vietnamese women and significantly contributed to creating the groundwork for women's liberation, which is the novelty point that emphasizes human rights of the Democratic Republic of Vietnam. When compared to other countries' Constitutions and laws, this will become more evident.

Women in many countries of the world have had to struggle, fight for the acknowledgment of this vital civil right. The United States enacted their first Constitution in 1789, but it took 72 years of struggle, from 1848 to 1920, for American women to enjoy equal voting and election rights as males. In Britain, married British women aged 30 and up were granted the right to vote in 1918 after a 30-year campaign. It was not until 1928 that British women were given full voting rights [3] (pp. 282). Spain had

to wait until 1933, France until 1944, Italy until 1946, Greece until 1952, and Switzerland until 1971 for women were granted the right to vote.

President Ho Chi Minh said a few words regarding the nation's first Constitution in his closing remarks to the National Assembly's second session, Term I: With that Constitution, Vietnam's independence and people's liberation were declared to the rest of the world. In addition, the Constitution has declared that Vietnamese women are equal to men in terms of enjoying all of the rights and freedom that come with being a citizen [4] (pp. 491). Respect for human rights is the foundation for constructing a strong state that is really of, by, and for the people.

### 3.2. The Inheritance of Gender Equality Provisions of Vietnam's Previous Constitutions

The 1959 Vietnamese Constitution contained more explicit provisions on women's rights which was based on the 1946 Constitution's gender equality ideals and provisions: Vietnamese women have the right to be treated equally to men in terms of political, economic, cultural, social and family activities. For the same work, women are paid the same as men. The State ensured that female workers and officers were allowed to take time off before and after childbirth while still earning full pay. Mothers' and children's rights were secured and the development of maternity homes, childcare centers, and kindergartens was ensured by the State. (Article 24) [5] (pp. 33).

Gender equality can only be achieved when women acknowledge their responsibilities and status in society that are equal to men's. In modern society, gender stereotypes continue to limit Vietnamese women's career opportunities. According to the 1980 Constitution which inserted a clause demonstrating the State's specific attention to this issue: The State and society pay attention to increase the political, cultural, scientific, technological, and professional level of women, and consistently promote the role of women in society. (Article 63) (Constitution of Vietnam, 86). Furthermore, for the first time in the field of marriage and family, the 1980 Constitution

provided that marriage was based on the principles of voluntary, progressive, monogamous, and equal marriage [5] (pp. 87).

The State added the following provisions to the 1992 Constitution: All actions of discrimination against women and degrading women's dignity are completely prohibited... (Article 63) [5] (pp. 142). This is a crucial legal foundation for the judicial authorities who are responsible for issuing legal documents on this subject. In particular, Decree No. 55/2009/ND-CP of June 10, 2009, which stipulated penalties for administrative infractions of gender equality.

The 2013 Constitution, which mentioned the phrase "gender equality" for the first time, specifically: Citizens of men and women are equal in all aspects, which is a step forward in the provisions of the Vietnamese Constitution on gender equality. The government has policies to ensure that men and women have equal rights and opportunities. The state, society, and family all contribute to women's comprehensive development and the promotion of their roles in society. Gender discrimination is prohibited (See Article 26) [5] (pp. 200).

The principle of gender equality was stated in the Communist Party of Vietnam's Resolution of the Party Congress. In particular, the Politburo (tenth term) Resolution No. 11-NQ/TW of April 27, 2007 "On women's work in the period of industrialization and modernization of the nation" clearly stated that building a contingent of female cadres commensurate with the important role of women is an objective requirement and a crucial content in the Party's cadre work strategy. The Party determined that Building, perfecting and effectively executing the legal and policy system on gender equality would create conditions for women's growth [6].

The Civil Code, the Penal Code, the Labor Code, and the Law on Marriage and Family of Vietnam all demonstrate gender equality. The National Assembly of Vietnam passed the Law on Gender Equality, consisting of 6 chapters and 44 articles, effective January 1, 2007, based on the highest legal basis and the Communist Party of Vietnam's policy on

gender equality. The Gender Equality Law introduced the principle of gender equality in social and family life, as well as means to ensure gender equality and the roles of agencies, organizations, families, and individuals in achieving gender equality.

The Law on Prevention and Control of Domestic Violence, which was passed by the National Assembly of Vietnam and went into effect on July 1, 2008, regulates domestic violence prevention and control in Vietnam, as well as issues of domestic violence prevention, protection and supports for domestic violence victims and the roles of individuals, families, agencies, and organizations in domestic violence prevention, control, and handling the violations.

These are crucial legislative foundations for works on gender equality and the achievement of Vietnam's sustainable development goals.

### 3.3. Current Status of Gender Equality Work in Vietnam

Up to now, the Government of Vietnam has issued the National Strategy on Gender Equality for the year 2011-2020 and approved the National Action Programs on Equality for the periods 2011-2015 and 2016-2020. To strengthen, the Ministry of Labor, Invalids, and Social Affairs has been given the task of state management of gender equality by the Vietnamese government in order to strengthen gender equality. The Gender Equality Department was founded by this ministry to carry out state management tasks in this area at the central level. Across the country, the Departments of Labor, War Invalids, and Social Affairs have formed specialized units and have officially given responsibility to these units to handle gender equality concerns.

In addition to the National Action Program on Gender Equality, the Vietnamese Government formed the National Committee for the Advancement of Vietnamese Women and authorized the National Action Program on Combating Domestic Violence until 2020 in order to ensure women's rights in all fields. Vietnam has also accepted the United Nations Convention on the Elimination of All Forms of

Discrimination Against Women, as well as two International Labor Organization treaties on Equal Pay for Equal Work.

Today, gender equality work in Vietnam has accomplished a number of significant accomplishments as a result of the continuous efforts. According to the World Bank's Gender Situation Report on Vietnam (December 2006), Vietnam is one of the world's leading countries in terms of the percentage of women participating in economic activities, as well as in terms of the development on gender equality [7] (pp. 90).

Vietnam's Gender Development Index (GDI) grew from a low average level in 1995 (at 0.537, ranking 72nd out of 130 nations) to a high average level in 2009 (reaching the value of 0.73, ranking the highest in 2009). 94th out of 182 countries ranked) [7] (pp. 167). By 2020, Vietnam's GDI reaches 0.997. Out of 162 countries, Vietnam is ranked 65th. In the first two decades of the twenty-first century, Vietnam is regarded as a nation that has eliminated the gender gap the fastest [8].

Women's participation in leadership and management in politics is one of the key indicators of social progress and gender equality. In the region, Vietnam has the highest proportion of female parliamentarians. Thirteenth term reached 24.4%, ranking 43rd out of 143 countries and second among the eight ASEAN countries with parliaments [9] (pp. 168).

Gender equality can only be accomplished economically when women are economically independent. Women make up 42.1 percent of all employees working in businesses around the country (State enterprises: 32.1%, non-state enterprises: 36.3%, FDI enterprises: 66.8%). Women make up a considerable share of the workforce in several areas, such as textiles and apparel (over 70%) and agriculture, forestry and fisheries (53.7%), trade, and so on. Over 20% of women work in business management and administration, which is extremely significant when compared to the rest of the world [10].

The annual Kovalevkaia award is a justification for celebrating Vietnamese female scholars in education and training. Teachers who are important subjects in this field make up a large percentage: almost all kindergarten teachers; 70.9% of upper secondary school teachers (elementary school 77.4%, secondary school 67.9%, high school 61.2%); 48.9% of university and college lecturers, 41.2% of professional intermediate lecturers. Female students in high school account for 49.4 percent of the total (primary school 48.6%, secondary school 48.5%, and high school 53.2%); female students in universities and colleges account for 49.9%; and female students in professional intermediate level accounted for 53.7% [10].

In the fields of health and care, gender equality also achieved significant results. Vietnamese women have a life expectancy of 76 years, which is greater than that of men (70 years), women in the area (73 years), women in Asia (72 years), and women worldwide. (72 years) [10].

The above important results are the foundation for continuously promoting gender equality in Vietnam in the future. Despite the accomplishments, gender equality work in Vietnam still has major limits.

First, gender equality rights are not explicitly stated in many legal documents. The majority of the new documents are more concerned with the regimes and regulations for female labor relations than with the issue of adequate pay for workers in rural areas or freelancers in urban areas.

Second, the existing legal system still lacks restrictions on sanctions for gender equality infractions; while some documents do have provisions, they are ineffective in preventing and dealing with violations. Despite the Law on Gender Equality's reference of disciplinary action, administrative handling, or criminal prosecution for violations, the Government of Vietnam has only published Decree No. 55/2009/ND-CP of June 10, 2009 which provides sanctions for administrative infractions on gender equality. The majority of sentences impose fines ranging from a few

hundred to several million Vietnamese dong [2] (pp. 84-112). There are still no particular criminal measures in Vietnamese law for dealing with this issue.

Third, gender stereotypes and the belief of Male chauvinism still exist. According to the results of the 2019 National Survey on Violence Against Women in Vietnam, nearly two out of every three women (62.9%) have experienced at least one or more forms of violence by their husbands and 31.6% currently experienced violence (in the last 12 months); the rate of women experiencing sexual violence by their husbands in 2019 was 13.3%, up from 9.9% in 2010; 4.4% of women said they had been sexually abused by the age of 15. In both rural and urban areas, sex imbalance at birth is on the rise and spreading across all regions. Without prompt intervention, Vietnam is expected to lack 2.3 to 4.3 million women by 2050 [11].

The research of Tran Thi Van Anh and Nguyen Huu Minh shows that men have a larger percentage of jobs and stable income than women. Men hold the majority of management positions. The percentage of men participating in management and leadership positions is twice as high as that of women [12] (pp. 135). The Vietnamese Labor Code requires that women retire 5 years earlier than males, which might be advantageous to men in terms of advancement, training, and employment opportunities.

The cause of this constraint is a lack of comprehensive gender equality awareness at all levels, sectors, and mass organizations. Therefore, the work of guiding, inspecting and urging the resolution's execution has not been consistent and drastic. Furthermore, it should be noted that the thoughts and beliefs accepted by many Vietnamese women contribute to gender stereotypes and gender inequality, which leads to the gender violence.

#### 4. Conclusions

Since the first Constitution of Vietnam was enacted 75 years ago, the National Assembly

of Vietnam has inherited and developed female equality rights in the 1959, 1980, 1992, and 2013 Constitutions, with clearer provisions and content of such equal rights extension. Up to now, The Vietnamese government has passed a number of key laws and policies to guide and implement the Constitution's provisions. However, the legal normative documents on this subject are still lacking in rigor and do not provide sufficient punishments for infractions. In fact, there is still a significant gap between the law and its implementation. In other words, in Vietnam, gender inequality still exists. The author would like to conclude this research with President Ho Chi Minh's message to Vietnamese women in his Will: "Women themselves must strive to rise up. It is a revolution that achieves actual gender equality." Obviously, when women are fully aware of the gender equality, progress toward the achieving of gender equality will be favorable and swift.

#### Declaration of Interest statement

This is to certify that to the best of authors' knowledge, the content of this manuscript is original. The paper has not been submitted elsewhere nor has been published anywhere.

#### Informed consent

Authors confirm that the intellectual content of this paper is the original product of our work and all the assistance or funds from other sources have been acknowledged.

#### Data availability

All data generated or analysed during this study are included in this published article (and its supplementary information files).

#### Research involving human participants and/or animals

This study did not have any problems involving humans or animals.

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