

## Women's Rights in Le Dynasty's "Quoc Trieu Hinh Luat", Vietnam



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**ABSTRACT:** Originating in the mid-15th century, the "Quoc Trieu Hinh Luat" legal law stands out for its remarkable value and achievements, featuring progressive attributes that surpass both preceding and succeeding legal laws. Throughout the extended period of Vietnamese subjugation by the North, the population endured significant influences from Chinese culture, operating within a feudal system that recognized the dominance of males over females. And Confucianism promoted a patriarchal system, a society where men have ultimate authority within the family unit and community. While the "Quoc Trieu Hinh Luat" could not entirely break free from this prevailing context, it introduced certain privileges for Vietnamese women that were absent in the contemporary Chinese setting. This article focuses on highlighted provisions safeguarding the dignity and rights of women in a society traditionally biased towards male superiority. Key aspects include right to decline marriage, the autonomy for women to enter voluntary marriages, the wife's right to unilaterally leave her husband, and the right to divorce. Additionally, the "Quoc Trieu Hinh Luat" imposes stringent penalties for offenses against the physical and mental well-being of women. In some instances, female offenders receive relatively lenient punishments compared to their male counterparts. The primary aim of this article is to contribute to scholarly discussions on women's rights within the socio-cultural milieu of the Le Dynasty's "Quoc Trieu Hinh Luat".

**KEYWORDS:** Woman's rights, Human rights, Le Dynasty, Le Dynasty's "Quoc Trieu Hinh Luat", Hong Duc law, The National Criminal Court Law, The Criminal Law of Le Dynasty, Le Thanh Tong

### INTRODUCTION

The Le Dynasty's "Quoc Trieu Hinh Luat" essentially inherited the Hong Duc Law, compiled by Le Thanh Tong Emperor. The absence of specific historical records pinpointing the exact year of its promulgation led subsequent generations to associate it with the Hong Duc era of Le Thanh Tong Emperor. This legal law (also known as the National Criminal Court Law or Hong Duc Law) includes 06 volumes with 722 legal articles, incorporating the content of the Hong Duc Law and featuring some later amendments during the Le Trung Hung era a few others. Its primary focus was on safeguarding royal authority, the aristocratic regime, social hierarchy, and the male-dominated family structure, albeit with some consideration for women's rights.

### LITERATURE REVIEW

The era of Vietnam dynasties signifies an important historical period of development of the country. It commenced after the monumental Bach Dang victory in 938, a key turning point that ended the Third Era of Chinese Domination of Vietnam. Vietnam witnessed 10 significant dynasties (Ngo, Dinh, Early Le, Ly, Tran, Ho, Later Le, Mac, Tay Son, Nguyen). Vietnamese dynasties consistently aimed for a harmonious blend of "benevolent governance" and "legal administration", balancing "national rule" with "public welfare". Human rights took root in the Ly Dynasty (1010-1225), marked by the issuance of the Hinh thu Law in 1042, reflecting a profoundly humane ethos. This legal law aimed to curb abuses of power, featuring provisions rich in humanistic values, such as prohibiting the sale and enslavement of young boys and excluding capital punishment. The Tran Dynasty (1225-1400), notably during the Dien Hong Assembly in 1248, exemplified a dynamic spirit rooted in prioritizing people's welfare. The Le period, marked by a 10-year resistance (1418-1427), revealed a spirit of tolerance and humanity towards adversaries. Following the enemy's surrender, the victorious army not only refrained from violence but also provided resources for the retreating Ming general and his 10,000 soldiers, ensuring their peaceful return. An exemplary display of humanitarianism during the Le Dynasty was the enactment of the "Quoc Trieu Hinh Luat". Notably, this legal law excelled in safeguarding women's rights, affirming their roles and positions in both family and society. Within the framework of contemporary Confucian ideology, the provisions regarding women in the "Quoc Trieu Hinh Luat" inevitably carried some negative aspects. However, the humane, progressive, and courageous spirit of the lawmakers of that era is historically acknowledged in safeguarding women's rights, not only within marriage and family but also in

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various social relationships. This progressive and humanitarian legal perspective transcended the norms of contemporary and preceding feudal laws, resonating throughout the societal order of that time and even beyond.

### METHODS

This research adopts the perspective of dialectical materialism and historical materialism as outlined by the Marxism-Leninism ideology, encompassing the Ho Chi Minh's ideology and the directives of the Communist Party of Vietnam regarding human rights. Utilizing theoretical research methods such as synthesis analysis, historical method, and employing systematic techniques like analysis, evaluation, interpretation, systematization, comparison, logic, and historical research, the purpose of this study is to present a profound exploration of women's rights during the Le Dynasty through the "Quoc Trieu Hinh Luat".

### RESULTS AND DISCUSSION

Confucianism's intricate influence has deeply shaped Vietnam's feudal society over time. Through the assimilation of Confucian principles, the "Quoc Trieu Hinh Luat" balanced humanitarian ideals with strict enforcement, navigating indigenous cultural nuances adeptly. Notably, it recalibrated societal norms concerning women, challenging erstwhile dynamics of male dominance. This shift reflects a conscientious synthesis of cultural nuances, offering a nuanced portrayal of women's social standing and familial roles intrinsic to Vietnamese society. While challenging entrenched Confucian doctrines, this recalibration underscores progress, albeit challenging to compare directly with contemporary standards, surpassing neighboring countries norms of the same era:

#### Female offenders receive relatively lenient punishments compared to their male counterparts

In the mid-fifteenth century, the legal landscape in neighboring countries largely omitted considerations of the criminal's gender during trials, treating males and females equally in terms of guilt. In contrast, Le Dynasty's "Quoc Trieu Hinh Luat" exhibited distinct regulations that leaned more towards bias against female criminals. A notable instance is found within Volume 1, Chapter "Danh Le" (regarding the nomenclature and definitions of regulations), Article 1 (Article 1 of the Quoc Trieu Hinh Luat), which delineates a disparate punitive framework, delineating that male offenders are subject to "Truong Hinh"<sup>1</sup> (corporal punishment involving a heavy stick), whereas their female counterparts are subjected to a milder form of punishment known as "Xuy hinh" (whipping). Likewise, the provision dictates that during the execution of the "Luu Hinh" penalty (exile), male convicts are mandated to wear cangue<sup>2</sup>, whereas their female counterparts are exempted from this requirement. Furthermore, in Articles 5, 6, and 7 (Article 5, 6, 7 of the Quoc Trieu Hinh Luat), outlines provisions for the deliberate reduction of sentences exclusively applicable to the wives of noble mandarins.

In Volume III, Chapter "Ho Hon" (concerning marriage and family matters), Article 2 (or Article 285 of the Quoc Trieu Hinh Luat) is noted that penalties for tax evasion by women and children are less severe than those imposed on men. Specifically, they are exempted from paying fines.

Furthermore, female offenders receive more lenient penalties than their male counterparts for some actions, including selling parent's land without permission, stealing, or engaging in behavior deemed unethical from a Confucian perspective, such as marrying a brother's or teacher's wife (Article 324, 378, 429, 441 and 446 of the Quoc Trieu Hinh Luat).

Another Article stands as a testament to the compassionate treatment of women within the legal framework is Article 23, Chapter "Doan Nguc" (trials), Volume VI aka Article 680 of this law. This provision, inherited and sustained by contemporary Penal Codes, mandates the postponement of a woman's sentence execution if she is pregnant or tending to a child. The deferment extends until after the child's birth and nurturing for a period of 100 days. This humane approach acknowledges the unique circumstances of women and demonstrates an evolved understanding of justice within the legal system.

#### The Right to the Protection of Physical and Mental Health

In the feudal era, Confucianism treated sexuality as a taboo subject, discouraging open discourse about sex. It promoted the idea that sexual activities should be governed by formal arrangements like marriage and should primarily serve the purpose of childbirth. Extramarital sex was not condoned within this framework. Women were particularly expected to uphold the virtue of chastity<sup>3</sup>, which entailed maintaining virginity before marriage and remaining faithful to their husbands, whether alive or deceased. As a consequence of these cultural and moral considerations, the Quoc Trieu Hinh Luat imposes severe penalties for sexual abuse against women. The legal framework reflects societal commitment to protecting women from harm and ensuring that acts of sexual abuse are met with stringent consequences, especially regarding behavior deemed unethical from a Confucian perspective. In there, incest was considered an especially grave offense and included in the category of "Thap Ac" (Ten grave crimes) based on Article

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<sup>1</sup> Five criminal penalties in "Quoc Trieu Hinh Luat" include "Xuy Hinh" (whipping), "Truong Hinh" (beating with a heavy stick), "Do Hinh" (hard labor), "Luu Hinh" (exile) and "Tu Hinh" (capital punishment).

<sup>2</sup> Cangue is a tool for public humiliation and punishment in East Asia, resembling a yoke with a flat board featuring a central hole for the neck and two additional holes for securing the hands to each arm.

<sup>3</sup> Chastity is a commitment or disposition to remain innocent of extramarital sexual intercourse.

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2, Chapter "Danh Le" (regarding the nomenclature and definitions of regulations), Volume I (Article 2 of the Quoc Trieu Hinh Luat).

Chapter "Thong Gian" (Fornication), Volume III take from Article 401 to Article 410 of the Quoc Trieu Hinh Luat to protecting women from harm and ensuring that acts of sexual. This Chapter distinctly differentiates rape from adultery, emphasizing that rape is the gravest sexual offense. Perpetrators of rape face severe punishment and are obligated to compensate the victims for the harm inflicted. The law discerns the social statuses of victims, including first wives, concubines, wives, fiancées, individuals of high social standing, and commoners. Notably, females can be both victims and offenders under this legal provision. Specially, the Quoc Trieu Hinh Luat includes a specific article addressing fornication with underage females. This provision mandates that individuals involved in fornication with girls aged 12 or younger will face sentencing comparable to that of rapists, irrespective of the girl's consent (Article 404 or Article 4 Chapter "Thong Gian"). This is a notable advancement in the content of the provisions of feudal law and is also close to the provisions of our country's current criminal law on this issue.

Furthermore, to maintain a fundamental standard of living for women and deter instances of illegal human trafficking, Article 313 of the Quoc Trieu Hinh Luat mandates that in the event of a little girl successfully selling herself, all implicating parties are subject to punitive measures, including "Truong Hinh" (beating with a heavy stick) or "Xuy Hinh" (whipping), penalties. Article 365 also states that arbitrarily forcing women into slavery for trading purposes results in fines equivalent to "Luu Hinh" (exile) and compensation. Additionally, all parties involved in the transaction will be implicated.

What's more, the Quoc Trieu Hinh Luat also upholds the welfare of women by instituting stringent penalties for perpetrating acts of violence against nieces and daughters-in-law (as detailed in Article 476), committing violence against wives (as outlined in Article 482), and uttering derogatory insults aimed at the spouses of noble officials (as specified in Article 496). Furthermore, the penalties are heightened if they significantly impact women. For instance, crimes such as robbery or theft accompanied by rape are punishable by "Tu Hinh" (capital punishment) in Article 428. Similarly, in Article 424, inducing miscarriage in another person results in "Do Hinh" (hard labor). If the miscarriage leads to death, the offense is classified as murder.

Moreover, in order to guarantee the essential sustenance of women, the Quoc Trieu Hinh Luat mandates that destitute widows lacking sufficient support and resources for livelihood maintenance are entitled to receive provisions, including food and clothing, from local authorities (as detailed in Article 295).

### **The Right to Protection in Marriage**

#### ***The right to decline marriage***

Primarily, the right to decline marriage must mention the annulment and renunciation of marriage, a facet underscored by the Quoc Trieu Hinh Law, which prioritizes the preservation of a girl's honor. For instance, as per Article 315, if the bride's family has accepted the wedding gift but the groom's family subsequently reneges on the marriage agreement, the groom's family will face "Truong Hinh" (beating with a heavy stick) penalties, including the forfeiture of the wedding gift and back to the bride's family. And Article 123 stipulates that a girl has the right to return a wedding gift and refuse to marry if the boy has an incurable disease, is a criminal, or is bankrupt. Conversely, the girl is not required to return the wedding gift.

Additionally, the "Quoc Trieu Hinh Luat", as outlined in Articles 338 and 536, dictates that individuals who exploit their authority to coerce ordinary girls into marriage or maliciously defame them as their wives are liable to face punitive measures, including "Do Hinh" (hard labor) or "Biem" (rank demotion or dismissal).

In similar fashion, this law also safeguards the chastity of widows in accordance with Confucian beliefs. No one is permitted to compel a widow to remarry against her will (as detailed in Articles 320).

#### ***The right to divorce for women***

According to the "Quoc Trieu Hinh Luat", despite the presence of stringent regulations concerning women, it also acknowledges certain compassionate provisions, particularly regarding the right of wives to divorce under specific circumstances:

Firstly, abandonment by the husband: Given the mutual obligation of spouses to love and support each other, prolonged abandonment by the husband constitutes a grave offense, entitling the wife to seek a divorce. Moreover, in cases of separation, the ex-wife retains the right to remarry without obstruction from her former husband (as detailed in Article 308).

Secondly, defamation of the wife's parents by the son-in-law: If the son-in-law unjustly disparages the wife's parents, the wife is empowered to initiate for divorce against the offending son-in-law (as detailed in Article 333).

On the whole, this regulation represents progressiveness and stands out among other feudal laws. The right to divorce for women is a significant indicator of a country's level of civilization, societal freedom, and human rights. The inclusion of women's right to divorce in the legal framework of the Le Dynasty is a distinctive feature, characterized by its humanity and boldness, showcasing the forward-thinking approach of Vietnamese emperor. It is a testament to modernity and progressiveness, as no other feudal regime, whether in the East or West, has dared to address this issue at the level of legal documentation.

### **The right to protect one's property**

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In certain Confucian-influenced societies like China during that era, family property was typically regarded as belonging solely to the husband's lineage. Even if the wife contributed to the accumulation of wealth, it was often considered the husband's exclusive possession. However, the "Quoc Trieu Hinh Luat" distinctly differentiates between property bestowed by the husband's family, property bestowed by the wife's family, and property acquired jointly by the husband and wife during the marriage. This provision serves to safeguard the legitimate rights of Vietnamese women, ensuring that upon the death of one spouse, the surviving wife retains property rights equal to that of her husband. Consequently, the wife is not entirely reliant on the authority of her husband and enjoys a measure of financial independence (from Article 374 to Article 377 of the Quoc Trieu Hinh Luat). This regulation can be viewed as a significant departure from the feudal legal tradition, where women were inherently relegated to a "proletarian" status and often regarded as mere "property" of their husbands.

The progressive and humane essence of the "Quoc Trieu Hinh Luat" is evident in its regulations concerning civil transactions involving women. According to the Law, the sale of property necessitates the signatures of both husband and wife, granting wives the autonomy to own property. Moreover, this legal framework acknowledges the relative equality of assets between spouses in communal property and inheritance rights. These legal provisions demonstrate sophisticated civil institutions that harmoniously blend Confucian-inspired laws with indigenous ethnic customs and practices in Vietnam. Despite the feudal emphasis on male inheritance for ancestral worship and family continuity, daughter's inheritance rights are recognized under Article 388. This article specifies that in the absence of a will, siblings divide the property among themselves, reserving 1/20 of the land as an offering, typically entrusted to the eldest son. However, if there is no eldest son, this offering is allocated to the eldest daughter (Article 391).

The "Quoc Trieu Hinh Luat" also mandates that in certain crimes resulting in homicide, apart from facing suitable punishment as per the law, the offender must also provide restitution to the wife and children of the victim by returning property to them as compensation (Article 420, 425 and 490). This provision aims to partly secure the livelihoods of the victim's wife and children, particularly in cases where the family lacks a male provider, as men typically bore the economic responsibilities and sustained the family during feudal times.

### The right to receive honor

The provision within Article 14, Chapter "Ho Hon" (concerning marriage and family matters), Volume III aka Article 297 of the Quoc Trieu Hinh Luat underscores the entitlement of women to receive incentives for upholding chastity. The failure of local officials to propose these rewards will result in their "Biem" (rank demotion or dismissal) or sanctions in accordance with the law.

## CONCLUSIONS

In general, the feudatory era heavily influenced by Confucianism witnessed a persistently low status for women, shaped by societal practices and norms reinforcing gender disparities. Confucian ideology, emphasizing male superiority and traditional family roles, played a significant role in subjugating women across various spheres of life. However, amid these challenges, the Le Dynasty's "Quoc Trieu Hinh Luat" demonstrated positive aspects in acknowledging and protecting women's rights. Despite the prevailing societal norms, this legal code showcased certain bright spots by recognizing and addressing specific facets of women's rights. These legal provisions represented a progressive stance, providing glimpses of improvement in the broader context of women's rights within the confines of Confucian-influenced societal structures during that period.

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