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Rights of Prisoners During Incarceration. A case study of Vietnam

Abstract

Vietnam's Decree No. 40/2019/ND-CP on the Implementation of the Law on the Execution of Criminal Sentences provides a solid legal basis to protect the fundamental rights of prisoners, regardless of life imprisonment or imprisonment for more than five years, which restricts freedom of movement and residence. These rights include the right to food, clothing, shelter, medical care, education, work, leisure and recreation, as well as provisions for women prisoners. This law maintains that prisoners are still human beings and citizens, and as such should be granted rights similar to those of free citizens, but based on their status as prisoners. However, there are serious limitations to the effective implementation of these rights that prisoners often face. Therefore, the purpose of this study is to determine the unhindered rights of prisoners during their imprisonment, to compare the current legislation and practice regarding prisoners, and moreover, to promote recommendations for amending and supplementing the 2019 law to protect the rights of prisoners during their imprisonment.

KEYWORDS: Prisoner Rights, Civil Rights, Female Prisoners, Detainees, Criminal Judgement Execution Law, International Human Rights

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1 | Introduction

The Criminal Judgment Execution Law of 2019 in Vietnam represents a pivotal legal framework that governs the rights and obligations of prisoners during incarceration. This law aims to strike a balance between restricting certain freedoms necessary for rehabilitation and maintaining prisoners' fundamental human rights. However, practical challenges in the law's application, including material limitations in detention facilities, highlight the need for a reassessment of the law's effectiveness. The importance of ensuring compliance with international treaties such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT) adds another layer of complexity.

Prisoners serving fixed-term or life sentences in detention facilities experience certain restrictions on their freedoms, which are intended to support rehabilitation and self-improvement. These limitations on prisoner rights, as well as their obligations during incarceration, are outlined in the Criminal Judgment Execution Law of 2019 and its supporting documents. However, due to insufficient resources and inadequate facilities, prisoners, particularly female prisoners – often face more severe constraints on their rights. The critical role of judges in implementing this law, as they are responsible for ensuring fairness and delivering final judgments.^[1] Yet limited judicial capacity, coupled with vulnerability to corruption, can compromise the ability of judges to issue impartial verdicts, which is particularly concerning in cases involving wrongfully accused individuals or those falsely portrayed as innocent.^[2]

The provisions on prisoners' rights in the 2019 law are still not fully compatible with the international treaties Vietnam is a party to. Therefore, to ensure adequate rehabilitation and education of prisoners and to respect their unrestricted civil rights, it is necessary to amend and supplement some current provisions of the 2019 law. This article aims to clarify the scope of prisoners' unrestricted rights, identify gaps between the law and its implementation, and compare these gaps with international standards. Additionally, it will provide recommendations for amending the law to enhance prisoner rights protection during incarceration.

¹ Bui Van Duy, Van Duy Bui, "Judge in Criminal Case Trial Activities in Vietnam" *Universum: экономика и юриспруденция*, No. 6 (2024): 66-68.

² Phạm Hồng Thái, Vũ Công Giao, Nguyễn Anh Đức, "The Court System in the Fight against Corruption in Vietnam: Traditional Problems and New Challenges from Free Trade Agreements" *Journal of Vietnamese Studies*, No. 1 (2020): 77-106.

2 | Research Methodology

The current research focused primarily on a literature review approach, drawing on legal texts, international human rights treaties, and relevant academic works.

The combination of experience summarization and analysis method in the legal text is one of the most effective way to analyze legal text to inform policy amendment or show policy implementation gaps.^[3] This method qualitatively examined case specific scenarios in the quest to assess the impact of Criminal Judgment Execution Law of 2019 on people and society at large. Data collection entailed the examination of legal documents to draw insights on the impact and, or the efficiency of this law in the society. Thematic, narrative and discourse analysis were then used to derive valuable insights to inform the current study. In order to amplify the findings from the legal documents, different interpretation techniques such as understanding and explaining subjectivity, contextualizing experiences, and drawing conclusions through insight development were used.

The theoretical research method is considered as one of the best methods in the practice of legal research since theoretical research method is apt when it comes to the practice of a theory.^[4] The current study tested renowned theories such as: Human Rights Theory, Prisoner's Rights Theory, Social Justice Theory, Feminist Legal Theory and Legal Positivism. These theories greatly enhanced the findings of the research on the effectiveness of Criminal Judgment Execution Law of 2019 in responding to the justice dynamics in Vietnam. Besides, the combination of all these theories enabled this study to develop a clearer framework to explain prisoners' rights, point out deficiencies in regulations, and recommend arguable changes to the law.

Written law analysis provides clarity and precision by allowing close examination of the text of laws, regulations, and legal documents, ensuring a clear understanding of the specific language and terms used.^[5] In the

³ Filippo Galgani, Paul Compton, Achim Hoffmann, "Combining different summarization techniques for legal text", [in:] *Proceedings of the workshop on innovative hybrid approaches to the processing of textual data*, (2012): 115-123.

⁴ Sanne Taekema, "Theoretical and normative frameworks for legal research: Putting theory into practice" *Law and Method*, (2018).

⁵ Philip M. Langbroek, Kees Van Den Bos, Marc Simon Thomas, J. Michael Milo, Wibo M. van Rossum, "Methodology of legal research: Challenges and opportunities" *Utrecht Law Review*, No. 3 (2017): 1-8.

process, gaps, ambiguities, or inconsistencies are identified in the legislation surpassing hinderances on the implementation or interpretation of the legislation. In addition, the method provides for a comparative view and the evaluation of how certain matters are dealt with in different legislation or under the law of other countries. The textual analysis carried out in the current study entailed identification of differences, identification of possible areas of uncertainty, proposed changes, legal harmonisation and contextual appreciation. By using a legal research approach with the aim of reviewing the legal provisions, the current study helped to define the rights of prisoners, to identify the existing shortcomings and, based on this information, to make realistic and constructive suggestions for improving the legislation on imprisonment in Vietnam.

The term “prisoner” originates from Chinese characters, meaning “a person who has committed a crime, been sentenced, and is currently incarcerated.”^[6] In current legal terminology, a prisoner broadly refers to an individual convicted of a crime by a court, sentenced to punishment, and whose verdict has taken legal effect. In a narrower sense, a prisoner is either a person convicted and sentenced to imprisonment who is undergoing rehabilitation in detention facilities, or a person sentenced to death but not yet executed.^[7]

However, according to the Law on Execution of Custody and Temporary Detention 2015, a clear distinction between those in custody (who are held as part of an investigative process) and those in temporary detention (who may be awaiting trial or court decisions) is made. This differentiation ensures that the rights and treatment of individuals are adjusted according to their legal status, emphasizing that pre-trial detention is not punitive but precautionary. Moreover, the law emphasizes the principle of “presumption of innocence,” ensuring that individuals are not treated as convicts during temporary detention.^[8]

Concurrently, the Criminal Judgment Execution Law 2019: “A prisoner is a person currently serving a fixed-term or life imprisonment sentence.”^[9] Here, a person serving a sentence refers to an individual who has been

⁶ Klaus Mühlhahn, *Criminal justice in China: A history* (New Haven: Harvard University Press, 2009).

⁷ Huinan Liu, Tsz Wai Li, Li Liang, Wai Kai Hou, “Trauma exposure and mental health of prisoners and ex-prisoners: A systematic review and meta-analysis” *Clinical Psychology Review*, 89 (2021): 102069.

⁸ Law on Temporary Detention and Custody 2015, art. 3, cl. 2.

⁹ Law on Execution of Criminal Judgments 2019, art. 3, cl. 2.

convicted and must undergo punishment according to a legally effective court verdict or decision and for whom an execution order has been issued.^[10] In this case, a prisoner means any person who has been sentenced to imprisonment for a prescribed period, or for life under the Criminal Judgment Execution Law 2019. Persons in temporary detainment or holding do not come under this definition and, therefore, do not have the enumerated right in this law. They are protected by the Law on Execution of Custody and Temporary Detention of 2015 since this legal act outlines the conditions of detention, treatment of detainees and the activities of the authorities being responsible for the detention centers. This law particularly entitles detainees to the maintenance of the quality standard of cell and house conditions, to health care, to be advised of their rights and have access to a lawyer, and to contact family members. It also mandates that detention center authorities must ensure that detainees are free from abuse, discrimination, and inhumane treatment, reflecting principles found in both domestic legislation and international human rights standards. Given this clear distinction between prisoners and detainees, the current study primarily focused on the provisions of the Criminal Judgment Execution Law of 2019 in relation to prisoners' rights.

3 | Rights of Prisoners

Vietnam has ratified or acceded to 7 of the 9 core UN human rights conventions and 25 ILO conventions, including 7 of the 8 fundamental conventions.^[11] Regarding international human rights conventions to which Vietnam is a party, we are committed to implementing them and consider this a political and legal responsibility of the State.^[12] This reflects Vietnam's consistent and comprehensive stance in all state policies and guidelines,

¹⁰ Law on Execution of Criminal Judgments 2019, art. 3, cl. 1.

¹¹ Thinh-Van Vu, Vu Thinh-Van, "Freedom of and Workers' Participation in Trade Unions in Vietnam", [in:] *The Dragon's Underbelly: Dynamics and Dilemmas in Vietnam's Economy and Politics* (Singapore: ISEAS – Yusof Ishak Institute, 2023), 262.

¹² Tuong Duy Kien, "The Role and Obligations of the State in Vietnam According to International Rules on Human Rights Respect and Protection in Businesses", [in:] *Laws on Corporate Social Responsibility and the Developmental Trend in Vietnam* (Singapore: Springer Nature Singapore, 2023), 27-39.

which is to “prioritize and care for human happiness and comprehensive development, protect and ensure human rights and legitimate interests of individuals, respect and implement international treaties on human rights to which our country is a signatory.”^[13] Furthermore, the quest of Vietnam to comply with the international provisions of human rights as outlined by Universal Declaration of Human Rights (UDHR) adopted by the United Nations in 1948 is a clear indication of allegiance to the principles of human rights as stipulated in the human rights theory. These principles state that human rights are universal, inalienable, indivisible, equal and non-discriminatory, and fosters dignity.^[14] Looking at the principles of the Feminist Legal Theory, which examines the intersection of law and gender, seeking to understand and address the ways in which legal systems perpetuate gender inequality and oppression, the conformity of Vietnam to the international provisions of human rights is a great step towards embracing these principles. For instance, one of the principles of the Legal Feminist Theory is challenging the traditional legal doctrines and practices that have historically marginalized women and other gender minorities which has been evident in the traditions and cultural norms of Vietnam in the past.^[15] The theory argues that many laws reflect patriarchal values and reinforce existing power structures, leading to systemic discrimination.^[16] It is therefore evident that, as a country, the principles of human rights theory, and the Legal Feminist Theory continue to be the guiding framework to improve the legal framework and policy provisions geared towards protecting the rights of prisoners.

Article 14 of Vietnam’s 2013 Constitution stipulates: “In the Socialist Republic of Vietnam, human rights and civil rights in the political, civil, economic, cultural, and social spheres are recognized, respected,

¹³ 2023 Country Reports on Human Rights Practices: Vietnam,” *U.S. Department of State*, accessed October 9, 2024. <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/vietnam/>.

¹⁴ Universal Declaration of Human Rights, adopted 10 December 10 1948. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>. [accessed 9.10.2024].

¹⁵ Phuoc Dinh Le, “Urban planning in Vietnam: A constructed field of patriarchy” *Science & Technology Development Journal: Economics-Law & Management*, No. SI2 (2021): 112-122.

¹⁶ Martha Albertson Fineman, “Feminist theory in law: The difference it makes”, [in:] *Feminist Legal Theories* (New York: Routledge, 2013).

protected, and guaranteed in accordance with the Constitution and the law.”^[17] Human rights in Vietnam are also specifically and profoundly manifested in the execution of imprisonment sentences. The State pays attention to and ensures the human rights of prisoners serving sentences in detention facilities, fully implementing their legitimate rights and interests in accordance with Vietnam’s Constitution, laws, and international treaties to which Vietnam is a signatory.^[18] Prisoners’ human rights have been codified in the provisions of the Criminal Judgment Execution Law 2019, which is the core legal document regulating activities related to the execution of imprisonment sentences while fully and specifically reflecting the rights and interests of the prisoners, demonstrating the humanitarian and humanistic spirit of the Vietnamese State.

The Criminal Judgment Execution Law 2019 was enacted based on summarizing achievements over 69 years of implementing imprisonment sentence execution in Vietnam, while also incorporating international experiences in this field. The law’s provisions reflect the spirit of global rules and standards on the execution of imprisonment sentences. However, in practice, there are still many issues regarding prisoners’ rights that have not been clarified or specifically guided, or have become outdated compared to the reality, thus failing to meet the requirements of ensuring human rights and civil rights of prisoners. Lack of clarity deviates from one of the principles of the Legal positivity which stipulates that legal certainty is essential to provide a framework within which individuals can understand their rights and obligations without ambiguity^[19]. As a result, such emphasis ensures that ambiguous clauses in certain provisions of the Law are challenged and amended. Some of these rights are listed below.

¹⁷ Constitution of the Socialist Republic of Vietnam,” Article 14, 2013. https://constitutionnet.org/sites/default/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf. [accessed 9.10.2024].

¹⁸ Gisle Kvanvig, “Human Rights in Contemporary Vietnam”, [in:] *Routledge Handbook of Contemporary Vietnam*, ed. Jonathan D. London (New York: Routledge, 2022), 104-116.

¹⁹ Martin Stone, “Legal Positivism as an Idea about Morality” *University of Toronto Law Journal*, No. 2 (2011): 313-341.

3.1. The right to education for prisoners

This is an important right that, if adequately addressed and effectively implemented, would significantly contribute to prisoner rehabilitation. Nevertheless, the Criminal Judgment Execution Law 2019 does not specify the scope of prisoners' right to education, and no specific guiding documents exist. Consequently, in practice, prisoners can only study what the detention facility organizes. The question arises: do prisoners have the right to self-study other content or professions? How are self-study and self-research supported, given that current forms of education are diverse and rich, and that many prisoners already have a foundation of general education, even university or postgraduate degrees? If they desire to study a particular field or profession, are they given the conditions to participate in such learning? The provisions and the implementation of the law are also challenged to support juvenile prisoners in the rehabilitation process.^[20] Having a clear framework for education and skill development is an important aspect, especially for young prisoners. The current study therefore recommends that, a basic curriculum should be designed and the necessary provisions availed to enable the law to address the gaps identified in the right to education for prisoners.

Additionally, prisoners' participation in classes or skill development programs faced significant barriers due to term and resource limitations.^[21] This is because the law lacks specific guidance on this right, and prisoners themselves are not encouraged or provided with appropriate conditions for self-study and self-research. Therefore, it is necessary to have specific guidelines on the scope of prisoners' right to education. Do prisoners have the right to register for distance learning courses to study and obtain degrees or certificates after serving their sentences? How should such education be organized? What material conditions should detention facilities have to meet this need while ensuring management and security issues?

²⁰ Le Huynh Tan Duy, Yvon Dandurand, "Alignment of Vietnamese Law on the Treatment of Juvenile Prisoners With International Standards and Norms" *Youth Justice*, No. 1 (2022): 3-20.

²¹ Thi Tue Phuong Hoang, Duy Thuyen Trinh, "The Overreliance on Termed Imprisonment and the Challenges within Youth Criminal Sentencing Framework: The Case of Vietnam" *International Journal for the Semiotics of Law-Revue internationale de Sémiotique juridique* (2024): 1-22.

3.2. The right to read books and newspapers

This is also a right that needs to be emphasized for prisoners, as through reading books and newspapers, prisoners can raise their awareness, gain knowledge, recognize virtues and principles, and change themselves in a positive direction. The sources of books and newspapers accessible to prisoners can be from relatives, friends, or the detention facility's library.

In fact, all detention facilities provide for library to meet the reading requirements of the prisoners and some of the employees. However, the crucial question is how effective these libraries are and whether prisoners are really motivated to read. This encouragement is not the form of a spoken words or word of mouth, or any form of slogan but an effort that would assist the prisoners to develop an acquaintance with the books and newspapers and to ensure that they develop a reading culture. This challenge is not unique to the detention facilities alone because there is still low sensitization concerning the practice of reading in the society, and thus, encouraging reading practices among prisoners is a lifelong project. Furthermore, such libraries were filled with prejudiced materials, they not only limited and predicted the prisoners' readings but also shaped their information consumption.^[22] This they have deemed as precautionary measure aimed at preventing prisoners from being exposed to sensitive information that may assist them in their attempted escape, but has at the same time infringed on the prisoners right to education. The first of the major postulates of Prisoner's Rights Theory postulates that rehabilitation should be the main purpose of imprisonment. According to this theory, prisoners should not only be punished or corrected but also be rehabilitated and integrated back into the society. Consequently, affordable and effective skills development must be included for the prisoners to enable the improvement of the decrease of the lack of clarity of the Criminal Judgment Execution Law of 2019.

In order to make the freedom to read books and newspapers an important factor that could contribute to the quality of rehabilitation and education of prisoners, there should be certain rules that could form the libraries containing the necessary amount of appropriate literature. Such libraries should serve to encourage prisoners for a change of heart, seek education and develop an understanding of culture, history and the lives of

²² Angela Michelle Brunson, *Faith, hope, and torture: Music in the prisoner-of-war camps of north Vietnam* (Memphis: The University of Memphis, 2021).

certain heroes. The effort to promote a positive read more culture among the prisoners needs strategies used in the correctional facilities to guide the prisoners into adopting of small reading habits but consistent. This is hence viewed as a way paving a way towards the process of translating awareness into action in the rehabilitation process of prisoners.

3.3. The right to medical care

Article 9 of Government Decree 33/2020/ND-CP of 9 November 2020 regulates medical care for prisoners as follows: Upon arrival at a detention facility, prisoners shall be medically examined by the medical staff of the facility and a health monitoring card shall be issued.

If prone to sickness or injuries on arrival in a detention facilities, prisoners receive medical checkups, treatment and care from the medical department of the respective detention center. If a prisoner sustains severe injury or sickness beyond the capacity of the detention center's medical personnel, then detention center head transfers the prisoner to the district or provincial or even military region hospital or any hospital of higher level. In cases beyond the treatment capacity of provincial hospitals or military region hospitals, as indicated by the head of that medical facility, the head of the detention center reports to the Criminal Judgment Execution Management Agency of the Ministry of Public Security (for prisons managed by the Ministry of Public Security) or the Criminal Judgment Execution Management Agency of the Ministry of National Defense (for prisons managed by the Ministry of National Defense) to consider and decide on further treatment; simultaneously, they must notify the prisoner's relatives or representatives for coordination in care and treatment. The medical facility prescribes food, medication and nutrition for prisoners who are treated in medical facilities outside the prison.^[23]

According to this regulation, it is evident that the areas for medical care for prisoners are minimal, and it is currently difficult to accurately determine what constitutes "beyond treatment capacity." Looking at the provisions of the Criminal Judgment Execution Law 2019, the right to guaranteed health care for prisoners in international law and Vietnamese

²³ Decree 33/2020/ND-CP, Article 9, dated 9 November 2020, of the Government of Vietnam. <https://vision-associates.com/vi/legal-news-november-2020/?download=12954>. [accessed: 9 October 2024].

law is a mandatory requirement, stemming from the responsibility to ensure the life of all citizens and persons who exist and live in a state; At the same time, it is also a legal obligation that binds all countries if they want to participate in the current international “common playing field”. However, the study acknowledges that while this is well emphasized in text and theory, it faces significant limitations in practice, with specific focus on the mental care.^[24] Additionally, the application aspects of the law still need to be supported by concrete institutional backing to ensure that these provisions are practiced. Similarly, cases that are gender specific, such as pregnancy need to be addressed with a very coherent approach to ensure that all the medical rights of the prisoners are addressed.

At the same time, a crucial question arises regarding whether the medical facilities within detention centers can adequately address the treatment and care needs of prisoner patients. Given that prisoners are serving life sentences or fixed-term imprisonments, their freedom of movement—and thus their right to choose their residence, is severely restricted. This raises concerns about whether current regulations on medical care guarantee that prisoners receive comprehensive health services, especially when prisoners and their families may have the financial means to access higher-quality medical care outside the prison system.

For instance, Vietnam had the highest number of female prisoners in Southeast Asia as of 2012.^[25] This context points to the importance of medical rights especially those that are associated with gender requirements, as the Feminist Legal Theory discovered them to have been violated at that time. Hence, medical care requirements vary tremendously and women prisoners should have their medical requirements met by making sure detention centers have the necessary resources and facilities. This approach is crucial in protecting their right as well as trying to avoid a compromise of their health while they are serving their time in jail.

The reality of medical care services in Vietnam shows that the quality of medical care at grassroots and higher levels varies greatly, as does the quality between public and private services. Therefore, imposing on prisoners to follow the state medical system when they have sufficient financial

²⁴ Vu Thi Thuy, “The right to health of prisoners serving life imprisonment in International Law and Comparative to Vietnamese Law”. https://law.unimelb.edu.au/_data/assets/pdf_file/0011/3919250/Vu-Thi-Thuy.pdf.

²⁵ Samantha Jeffries, “The imprisonment of women in Southeast Asia: Trends, patterns, comparisons and the need for further research” *Asian Journal of Criminology*, 9 (2014): 253-269.

means to choose higher quality medical care does not ensure the right to the medical care of a citizen or a prisoner who is a citizen with restricted freedom of residence and movement.

Therefore, it is thought that the regulations on medical care for prisoners should be expanded to allow prisoners to choose medical treatment services and to use higher-quality medical care services. Of course, along with the choice of medical services, prisoners must bear the costs incurred, such as the cost of medical services, the cost of ensuring security, and security issues in the process of managing prisoners undergoing medical treatment.

3.4. The right to freedom of love and marriage

The Criminal Judgment Execution Law 2019 does not stipulate whether prisoners have the right to love and marry. However, the right to love and marry is a fundamental human and civil right, satisfying both spiritual and emotional needs and maintaining the lineage. Therefore, reasonably, a person who is only deprived of the right to freedom of residence and movement should still be guaranteed the right to love and marry.

In fact, regarding the right to love, neither the law nor anyone can prohibit it because it belongs to the emotions and is natural; we can only prohibit relationships that violate morality and social ethics.

Meanwhile, the right to marry is a right provided by law for citizens, and prisoners, if they voluntarily and have someone voluntarily marry them without violating prohibitions and satisfying the conditions for marriage according to the Law on Marriage and Family 2014, still have the right to marry. Marriage registration can be carried out in accordance with Article 26 of Circular 24/2020/TT-BTP dated May 20th, 2020, of the Minister of Justice.^[26]

²⁶ Article 26. Procedures for Mobile Marriage Registration, Law on Marriage and Family, 1. <https://lawnet.vn/thong-tin-phap-luat/en/tu-van-luat/cases-of-mobile-birth-registration-death-registration-and-marriage-registration-in-vietnam-127308.html>. [accesse: 11.10.2024]. The commune-level civil status registrar assigned to perform mobile marriage registration is responsible for preparing sufficient declaration forms, civil status documents, and necessary conditions to conduct mobile registration. At the mobile registration site, the civil status registrar is responsible for examining and verifying the marriage conditions of the parties; guiding citizens to complete the information in the Marriage Registration Declaration Form; and writing the Application Receipt. The deadline for returning

The exercise of rights and obligations of spouses for prisoners who marry during their sentence execution is still carried out as with prisoners who were married before serving their sentences. Prisoners are allowed to meet their spouses in private rooms when they comply well with the rules and regulations of the detention facility. However, spousal meetings in private rooms must be carried out under certain conditions, such as the implementation of measures to prevent infectious diseases; the prisoner's application to meet his/her spouse in a private room must include a commitment to comply with the law, the detention facility's regulations, the regulations of the Prisoner Meeting House, and the current legal provisions on population and family planning; female prisoners must use contraception and have a written commitment not to become pregnant to ensure the duration of their imprisonment sentence.^[27]

Similarly, sexual rights for prisoners do not exist in India, which brings the discussion of whether sexual rights are to be considered as a privilege or a right. It is however contended that other conditions like loneliness, psychological well-being and sexual satisfaction show that sexual rights should be a right not a privilege.^[28] Comparable problems which can be observed in Vietnam, especially in prisons, include overcrowding, and the absence of funds for the realization of sexual rights administration.^[29] This lack of capacity essentially marginalizes the sexual rights of prisoners, their right to reproductive health and even their rights to the privacy of partnerships. According to Social Justice Theory these principle are core ones; equality, human dignity, and equity. This framework empowers a change in the inequitable prison system currently, as seen to hurt women, the LGBTQ and ethnic minorities disproportionately.^[30] Given that these

the results of mobile marriage registration shall not exceed 5 working days from the date of receipt.

2. Within the 5-day period stipulated in Clause 1 of this Article, if it is determined that the parties meet the conditions for marriage as prescribed by the Law on Marriage and Family, the civil status registrar shall submit to the Chairman of the Commune-level People's Committee to sign the Marriage Certificate, then proceed to present the Marriage Certificate to the parties at the mobile registration site.

²⁷ Articles 4 and 5 of Circular 14/2020/TT-BCA, issued February 10, 2020, by the Minister of Public Security.

²⁸ Prithivi Raj, "Sexual Rights of the Prisoners" *Supremo Amicus*, 17 (2020): 356.

²⁹ Thu-Huong Nguyen-Vo, *The ironies of freedom: Sex, culture, and neoliberal governance in Vietnam* (Washington: University of Washington Press, 2012).

³⁰ *Handbook of social justice theory and research*. ed. Clara Sabbagh, Manfred Schmitt (New York: Springer, 2016).

groups are especially vulnerable in Vietnam, the issue of sexual rights of prisoners and prison conditions assumes a greater significance.

The main challenge of this issue is to distinguish between sexual rights on paper and the ways, in which these rights can be put into practice. Physiological self-governance over or for one's own body means are central in eradicating sexual force, coercion, or violence. However, one needs to show queerness of gender and sexual identity as a form of consideration of prisoners' rights and their human dignity, for example, to allow prisoners of one sex to receive hormonal treatment in case they are transsexual. Vietnam requires major legal changes enhancing prisoners' sexual rights where key reforms aim at gender identity. This must be coupled with resources to enable the realization of these rights and or the making of that right realizable. Lacking proper funding, the implementation of those rights would only be nominal, with no significant improvement in the lives of prisoners. Therefore, the promotion of sexual rights in the prison context is not only a question of asserting existing rights, but also of the capacity of the prison structure to facilitate them.

3.5. Some Rights of Female Prisoners

Female prisoners, as subjects with special physical, mental, and physiological characteristics, are entitled to certain specific rights during their imprisonment that male prisoners do not enjoy. These rights are equally emphasized in the legal feminist theory.

Clause 1, Article 51 of the 2019 Law on Execution of Criminal Judgments stipulates: "If a pregnant female prisoner is not granted a temporary suspension of imprisonment, she shall be provided with appropriate accommodation, receive regular or ad hoc prenatal examinations, receive medical care if necessary, have reduced working hours, and be provided with a diet that ensures her health."

Accordingly: "Female prisoners who are pregnant, on maternity leave, or nursing children under 36 months old within the detention facility shall receive a total food ration equal to twice the standard daily ration compared to the prescribed amount"; "they may exchange food items as directed by a physician or doctor; female prisoners who give birth in prison shall be provided with necessary items for infant care equivalent to one month's food ration for children of prisoners as prescribed"; "they shall be allocated a minimum sleeping space of 3m² per prisoner, have reduced

working hours, and receive medical care as prescribed.” “The detention facility is responsible for paying the actual costs of medical examination and treatment for children under 36 months old staying with their mothers in prison, with the medical examination and treatment expenses funded by the state budget.”^[31]

This regulation demonstrates the highly humanitarian nature of Vietnamese law regarding female prisoners, helping prisoners in general and female prisoners, in particular, to trust in our state’s management system, to change their perceptions, and to broaden their path towards rehabilitation.

However, in practice, the implementation of these regulations is not widespread in detention facilities because most female prisoners nursing children under 36 months old or pregnant often request postponement of their sentences. The implementation of the provisions on the rights of pregnant women prisoners, women who have recently given birth and women who are breastfeeding children under 36 months of age in temporary detention centres has not yet been comprehensively evaluated from different perspectives. Perhaps for this reason, female prisoners who are pregnant or nursing children under 36 months old prioritize requesting the postponement of their sentences.

A question arises: how should the situation be handled if a female prisoner becomes pregnant during her imprisonment in a detention facility with her husband^[32] or another person? It is not possible to force the female prisoner to have an abortion, as this would be an inhumane measure. In other words, the prisoner should be allowed to give birth if she wishes. Or in the case of a female prisoner serving a life sentence, if she wants to have a child, should she be allowed to do so? Current regulations do not permit this, but does prohibit female prisoners from having children deprive women of their right to motherhood? If such a prisoner has a husband who is willing to have a child with her despite knowing she is serving a life sentence, or if the female prisoner has the financial means and there is a voluntary sperm donor to perform embryo preservation and artificial insemination, should she be allowed to have a child?

³¹ Article 10 of Decree 133/2020/ND-CP, issued 9 November 2020.

³² Given that during their sentence, female prisoners are still allowed contact with their husbands and may be permitted to meet their husbands in private rooms arranged by the detention facility, as analyzed in the preceding section.

Unfortunately, a lot of nations and their governments are lack of clear regulations concerning the permission for the female prisoners to get pregnant and give birth in detention centers if they are pregnant when detained. It is only in special cases that women bring forth children and let them grow up in such prison, legally yes but not catered for. Taking into account that imprisonment of a woman during pregnancy is impossible, the restrictions are mainly related to the concerns over the health of the former and her baby in penitentiary establishments. Detention centre is not adequately facilitated, and at times there are no basic medical to give to mothers or children might not receive proper care if they are part of a healthy family since they are detained in detention centres. For these reasons most countries deny pregnancy in prison environments. Regarding another neighboring country, Cambodia, some challenges connected with pregnancy of prisoners and this issue entailed absence of the resources needed to provide the mother who is getting acquainted with baby requirements^[33]. The concern, therefore, seems to be not motivated out of antagonistic need to deprive female prisoners of their right to sexual liberation than that of the waning ability of the prison facilities to meet the needs of mothers and their babies. This is well observed regarding prisons in the developing states like Vietnam naked resource dictates the prisoners' policies. Regarding the latter, the Pregnancy and child rearing in prison policy may also differ considerably depending on the elaboration and development of the correctional system; it is to be said that countries of the EU or any developed country, including the USA may have even more highly developed systems than the country under analysis.

³³ Billy Gorter, Philip J. Gover, "Supporting female prisoners and their families: The Case of Cambodia", [in:] *Gender, Criminalization, Imprisonment and Human Rights in Southeast Asia*, ed. Andrew M. Jefferson, Samantha Jeffries (Bingley: Emerald Publishing Limited, 2022), 45-57.

4 | Rights of Prisoners under Vietnamese Law Compared to International Legal Requirements

Participation in international human rights conventions has prompted Vietnam to standardize its legal system to meet the requirements of international law, aiming to implement human rights in all areas of social life.^[34]

The 2019 Law on Execution of Criminal Judgments basically meets international law requirements on human rights. In particular, it prioritises the principle of humanity in order to reform prisoners and guide them towards good, rather than suppressing or depriving them of all civil and human rights that can be exercised in detention facilities.

4.1. Human Rights in the International Covenant on Civil and Political Rights of 1966

According to the International Covenant on Civil and Political Rights of 1966, persons deprived of their freedom must be treated with humanity and with respect for the inherent dignity of the human person. Everyone has the right to freedom of belief and to manifest his or her religious beliefs. The right of men and women of marriageable age to marry and found a family is recognised.^[35]

The 2019 Law on Execution of Criminal Judgments has accordingly made fundamental provisions that meet and are compatible with the human rights provisions in the International Covenant on Civil and Political Rights of 1966. In particular, the draft amendments and supplements to specific articles of the 2019 Law on Execution of Criminal Judgments have added many open provisions on prisoners' rights. In addition to the specific rights listed in Article 27 of the 2019 Law on Execution of Criminal Judgments, prisoners "Shall enjoy other rights of citizens if not restricted by this Law and other relevant laws, except in cases where those rights cannot be exercised due to their serving sentences in prisons, detention centers,

³⁴ Tan Duy, Dandurand, "Alignment of Vietnamese Law", 10.

³⁵ International Covenant on Civil and Political Rights, 16 December 1966, United Nations Treaty Series 999:171.

or temporary detention houses.”^[36] The addition of this provision is truly a breakthrough in ensuring citizens’ and prisoners’ rights to a new level where many civil rights of prisoners are maximally protected.

4.2. Human Rights in the International Covenant on Economic, Social and Cultural Rights of 1966

The human rights provisions of the International Covenant on Economic, Social and Cultural Rights of 1966 grant people the right to participate in work, to just remuneration and adequate rest for the renewal of their energies; to social security; to respect and maximum protection for the well-being of the family, the right to freedom and voluntary marriage of couples; the right to food, clothing, housing and medical care; the right to study and improve one’s qualifications; the right to play and recreation; the right of mothers to rest, care and social security benefits when giving birth.^[37]

These contents have been stipulated in Articles 27 and 32 of the 2019 Law on Execution of Criminal Judgments. At the same time, the draft Law Amending and Supplementing a Number of Articles of the 2019 Law on Execution of Criminal Judgments has also been added and amended to increase the compatibility of domestic law with international treaties. Particularly regarding the right to medical care, prisoners “are entitled to medical examination and treatment regimes in accordance with the provisions of health insurance law.”^[38] However, while this study appreciates such intervention, there is a need to anchor such provisions in specific institutions to address major gaps in the implementation of such policies as observed by Hoang and Trinh (2024). Similarly, standards should be established to ensure that such policies support the establishment of prisons that have the necessary infrastructure and resources to support prisoners’ rights.

³⁶ Ministry of Public Security, Compatibility Review Report of the Draft Law Amending and Supplementing Several Articles of the Law on Execution of Criminal Judgments with International Treaties to which Vietnam is a Member, National Assembly’s Electronic Information Portal. <https://academic.oup.com/book/58106/chapter/479380079>. [accessed: 25.8.2024].

³⁷ Articles 7, 9, 10, 11, 12, 13, and 15 of the International Covenant on Economic, Social and Cultural Rights 1966.

³⁸ Article 48 of the Draft Law Amending and Supplementing Several Articles of the Law on Execution of Criminal Judgments 2019.

4.3. Convention on the Elimination of All Forms of Discrimination against Women of 1965

According to this Convention, “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, based on equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

The 2019 Law on Execution of Criminal Judgments has made introductory provisions for female prisoners to be protected and exercise human rights, to be respected and granted special rights to ensure physical and mental protection and the role of motherhood. Accordingly, female prisoners who are pregnant or breastfeeding children under the age of 36 months in prison will enjoy better regimes of food, clothing, accommodation and rest than ordinary prisoners in order to ensure the health of both mother and child and to preserve the sacred bond between mother and child.^[39]

In general, the 2019 Law on Execution of Criminal Judgments has fully stipulated prisoners’ rights, meeting the protection of civil rights and human rights of prisoners as required by international treaties to which Vietnam is a party. However, the history of the formation and development of a young judicial system such as Vietnam’s requires a process of research, evaluation, resource allocation and improvement, both to perfect the legal provisions on prisoners’ rights and to ensure that the provisions of the law are effectively and correctly implemented in practice, so as to truly protect and assist prisoners to be rehabilitated and to enjoy their civil and human rights during the period when they are deprived of their freedom of residence and movement.

³⁹ Article 51 of the Law on Execution of Criminal Judgments 2019; Decree 133/2020/ND-CP, issued 9 November 2020, by the Prime Minister, guiding the implementation of several articles of the Law on Execution of Criminal Judgments 2019.

5 | Proposals and Recommendations

The program and plan for amending and supplementing the 2019 Law on Execution of Criminal Judgments have been established. It is hoped that the Draft Law amending and supplementing specific articles of the 2019 Law on Execution of Criminal Judgments will be soon considered and passed so that prisoners can extensively enjoy the rights to which they are entitled.

Accordingly, there is a need to add more explicit provisions on the right of prisoners to marry, including procedures for registering marriages between prisoners or between a prisoner and a free person outside prison. There is also a need for civic education to ensure that prisoners are aware of their rights so that they can make informed decisions.

The right to medical care should be extended in terms of treatment facilities, financial conditions, health status and measures to ensure the safety of the prisoner during medical treatment. This provision aims towards a fair, equal, and progressive judicial system.

In addition, the regulations on the right of prisoners to study and research must be more precise and guided in terms of the scope, level and methods in which prisoners can participate in order to satisfy their desire for education and research and thereby transform themselves and become intellectual and progressive citizens with a high ability to reintegrate into the community after their release.

6 | Conclusion

In conclusion, it is clear that prisoners are in a limited liberty state where their only human right is violated is the right to freedom of residence and movement. For this reason, the Vietnamese legal system has provisions of the law on the enforcement of criminal judgments dealing with prisoners' rights. Basic citizenship rights, the prisoners remain upheld in legal documentation and among the rights include food, clothing, shelter, medicine, education, work, play and the right to family. These rights are actually practiced and are called humane and thereby support the process of rehabilitation efficiently. Nonetheless, the practical application of such policies in such a country, as is Vietnam, presents certain difficulties owing to the country's political setting and the lack of funds. These are some

of the factors that limit the effective realization of prisoners' rights and their provisions in the law. This article suggests some changes in criminal law regulations and their implementation could greatly contribute to the improvement of prisoner's rights protection. It would also mean civility in restoring those who have gone astray by giving them an opportunity to reintegrate into society and lead decent lives again. Further, by specifying the legal frameworks for the implementation of the 2019 Law on Criminal Justice in Vietnam, this paper aims to show how the law in theory differs from the law in practice in Vietnamese prisons.

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