

Bridging the gap between the law on gender equality in Vietnam and practice: A proposed approach from a socialist feminist perspective

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ABSTRACT

Vietnam has witnessed significant gender-equality achievements thanks to the great efforts of the Government in general and strong laws and policies on gender equality in particular, over the past decades. Under these laws and policies, Vietnamese women enjoy a system of rights allowing them to participate in all socio-economic and political activities. By law, Vietnamese women are equal to men in all aspects. However, in reality, besides great achievements, gender inequalities still exist in Vietnam. One perceived cause of this issue is that backward traditional ideologies of patriarchal beliefs subordinating women, together with many values hindering women's advancement, are still deeply ingrained in the minds and the behaviour of many Vietnamese people. Unfortunately, these invisible values, together with unwritten cultural and social norms or rules of behaviour that disadvantage women, are still so powerful that they, to some extent, limit the effectiveness of the enforcement of laws and policies advancing gender equality. Vietnamese scholars and legislators have discussed this issue. However, it seems that there is not enough emphasis on solutions from feminist perspectives. For this reason, it is essential to incorporate feminism into the current Vietnamese jurisprudence. On this foundation, this article brings up Nancy Fraser's socialist feminist theory, arguing that Fraser's feminist theory can help deal with the gender issues mentioned above. One remarkable feature of this theory is that it points to the male-female dichotomy in patriarchal ideologies, considering the dichotomy between men and women as the root of gender disparities and thus suggesting that this dichotomy should be destabilized in order to improve gender equality. Furthermore, the transformative approach in this theory contributes to the enhancement of women's status. In terms of structure, the article first gives a snapshot of the problem regarding gender inequalities in Vietnam, then mentions the dominant cause of this issue as well as suggested solutions from Vietnamese leaders and legislators' perspectives, and finally, the article offers Fraser's socialist feminist theory, which can help deal with the problem as mentioned earlier, together with a discussion of the issue from this socialist feminist perspective. The article ends with some suggestions for the Law on Gender Equality in Vietnam and the conclusion that this socialist feminist theory, given its significance and striking relevance to gender matters, can add one dimension to Vietnamese legal scholarship and can also be used as a theoretical framework for research related to law, gender equality, and social justice in Vietnam.

Key words: gender equality, law, feminist, socialist, dichotomy

INTRODUCTION

Over the past decades, thanks to strong laws and policies on gender equality developed by the Government of Vietnam, the country has witnessed considerable gender-equality achievements. Under these policies and laws, Vietnamese women benefit from a system of rights allowing them to participate in all socio-economic and political activities¹. By law, Vietnamese women are equal to men in all spheres. However, in reality, besides great achievements, gender inequalities still exist in Vietnam, including women's greater contribution to domestic work²⁻⁴, barriers to women's career progression, women's unequal access

to land and financial resources in domestic spheres, women's low rate of political representation^{2,4}, and women's low rate of leadership positions in enterprises⁵. In addition, women are more likely than men to be victims of domestic violence^{6,7} and human trafficking⁶. One perceived cause of this issue is that backward traditional ideologies or patriarchal beliefs subordinating women, together with many values hindering women's advancement, are still deeply ingrained in the minds and the behaviour of many Vietnamese men and women⁸. Unfortunately, these invisible values, together with unwritten cultural and social norms or rules of behaviour that disadvantage women, are still so powerful that they, to some extent,

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limit the effectiveness of the enforcement of laws and policies protecting women's equal rights. Vietnamese scholars, leaders and legislators have discussed this issue. However, it seems that there is not enough emphasis on solutions from feminist perspectives^{9,10}. For this reason, it is essential to incorporate feminism into the current Vietnamese jurisprudence. On this foundation, this article brings up Nancy Fraser's socialist feminist theory¹¹, which can help deal with the gender issues mentioned above, arguing that Fraser's feminist approach may effectively disrupt backward ideologies or patriarchal beliefs underpinning the action of many Vietnamese people – the action that perpetuates gender inequalities and hence creates a gap between the Law on Gender Equality and the actual practices. One remarkable feature of Fraser's theory is that it points to the male-female dichotomy in patriarchal ideologies, which to Fraser is the foundation of gender inequalities, and hence this dichotomy should be destabilized. Furthermore, the transformative approach in this theory contributes to the enhancement of women's status and gender equality. In terms of structure, the article first gives a snapshot of the problem regarding gender inequalities in Vietnam, then mentions the dominant cause of this issue as well as suggested solutions from Vietnamese leaders and legislators' perspectives, and finally the article offers Nancy Fraser's socialist feminist theory, which can help deal with the problem as mentioned earlier, together with a discussion of the issue from this socialist feminist perspective. The article ends with some suggestions for the Law on Gender Equality in Vietnam and the conclusion that this socialist feminist theory, given its significance and striking relevance to gender matters, can add one dimension to Vietnamese legal scholarship and can also be used as a theoretical framework for research related to law, gender equality, and social justice in Vietnam.

MATERIALS-METHODS

The author collected information from various sources or relevant literature to find the answers to questions regarding gender (in)equality in Vietnam, causes, perceived limitations of the Law on Gender Equality and proposed solutions. In addition, from the perspective of Nancy Fraser's socialist feminism and through analytical reading, the author identified in the Law on Gender Equality some articles that have the potential for significantly improving gender equality in reality if they are revised. The author also used this feminist theoretical foundation for analyzing and discussing some articles in the law as well as making suggestions.

RESULTS

A Snapshot of Gender (In)Equality in Vietnam

Compared to many countries in the region, Vietnam has witnessed more women's advancements, especially over the past decades. By law, Vietnamese women are equal to men in all aspects. As indicated in Article 4 of the Law on Gender Equality¹ passed by the National Assembly of the Socialist Republic of Vietnam on November 29, 2006 and took effect from July 1, 2007:

- 'The gender equality goals are to eliminate gender discrimination, to create equal opportunities for man and woman in socio-economic development and human resources development in order to reach substantial equality between man and woman, and to establish and enhance cooperation and mutual assistance between man and woman in all fields of social and family life.' (p. 2)

In reality, thanks to laws and policies on gender equality more Vietnamese women have the opportunity to finish higher education and hold important positions in economic-political areas. Women have become more independent financially. Remarkably, women-owned small and medium-sized enterprises account for approximately 31% of Vietnam's 500,000 small and medium-sized enterprises (SMEs), creating jobs for more than 1.63 million people¹².

However, gender inequalities still exist both in domestic and public spheres. According to the report from the Institute for Social Development Studies (ISDS)² in Hanoi:

- 'The most recent Government report on the implementation of the National Program on Gender Equality in the five year period of 2011-2015 has recognized that the progress of gender equality in Vietnam is still slow, sometimes stagnant, or even regressive in various areas.' (p. 10)

More specifically, women are still subordinated to men in many aspects. First, women have to undertake more domestic work²⁻⁴. Even worse, in many families, women have unequal access to land and financial resources^{2,4}. In the public sphere, fewer women engage in political activities, which accounts for women's low rate of political representation^{2,4}.

It is important to note that in enterprises, not many women hold top leadership positions. Indeed, in a report by the International Labour Organization (ILO) in 2020:

- ‘Of the enterprises surveyed in Viet Nam, 63 per cent indicated that women were present at the supervisory management level, 73 per cent confirmed that they had women as middle managers but only 15 per cent answered that women held top executive positions.’ (5, para. 5)

Valentina Barcucci, ILO Viet Nam Labour Economist concluded, ‘Gender biases in the mind-sets of managers can be barriers for women to advance into leadership positions’ (5, para. 6). More dangerously, in a report by the World Organisation Against Torture (OMCT)⁶, women are more likely than men to be victims of domestic violence, sexual violence and human trafficking. A recent study⁷ even found that the percentage of women abused by their spouses or partners in 2019 was 13.3% compared with 9.9% in 2010. In other studies, researchers^{3,13} discovered another issue. That is gender-based income inequality. According to a report from the International Labour Organization, in 2019 women’s income was 13.7% lower than that of men although their working hours were similar to those of men³. It means that gender-based income inequality in this aspect got worse because

- ‘[i]n the period of 2009-2016, the average monthly income of women was still 10% lower than that of men. This difference is equivalent to about 30USD on the total salary of less than 200 USD per month.’ (13, p. 210)

The authors also discovered that one of the causes of this inequality is prejudice against women. They give a detailed example of prejudice against women on the part of employers:

- ‘When accepting a young female employee, business owners are often afraid of 6 months maternity leave. Many businesses force female employees to sign an annex to their labor contracts to not become pregnant during the first 2 years of employment. As a result, some businesses prefer to recruit men even though their ability to work is inferior to that of women. On the subject of wages, ... business owners intentionally pay female workers less than men doing the same job.’ (13, p. 213)

The authors also note that female workers are working in lower conditions than their male counterparts, and more men (58.8%) than women (49%) in wage employment have labor contracts with employers. In the domestic sphere, these researchers also found an unequal housework division between men and women.

The unpaid and long-lasting lion’s share of housework not only damages women’s health but also impedes their career progression and reduces their income¹³. Gender-based job division is also a matter of concern to many researchers. According to ISDS²,

- ‘There is a higher proportion of men compared to women working in construction, self-services and manual labor. However, women comprise a higher proportion in agriculture/forestry/fishery, education, training and small business.’ (p. 44)

Even in the same occupation, there is also a labour division as a result of gender stereotypes:

- ‘In family agriculture production, women tend to undertake almost all 11 tasks which the research itemised, while men primarily undertake only 2 tasks: ploughing/treating the soil and spraying pesticides. In raising animals and fish farming, women also undertake 9 out of 11 tasks, while men primarily undertake only two tasks: buying and maintaining machinery and harvesting/fishing.’ (2, p. 11)

A recent report¹⁴ from ILO-Vietnam in 2021 concludes that Vietnam has still a long journey ahead to attain gender equality in labour, stating that although a high rate of women participating in wage employment, the quality of their jobs is not high. In other words, women’s jobs are less stable, less secure, and pay less. More importantly, according to Dr. Bui Ton Hien, Head of Institute of Labour Science and Social Affairs (ILSSA), the Covid-19 pandemic has a more negative impact on women’s jobs and hence widens the gap between Vietnamese men and women in the field of labour¹⁴.

In short, as indicated, although there are great achievements in gender equality in Vietnam, gender disparities still exist in many aspects.

Perceived Causes of Gender Inequality in Vietnam

Scholars and researchers have identified a variety of reasons for gender inequalities in Vietnam. There are two main related reasons: traditional patriarchal ideologies and prejudice against women^{2,6,8,15}.

First, traditional patriarchal ideologies that privilege men have been deeply embedded in Vietnamese culture for hundreds of years. These ideologies may be called by different names, namely Confucian ideologies, conventional ideologies or feudal ideologies, and the core feature of these ideologies is *trọng nam khinh*

nữ (respect for men, disdain for women) or patriarchal. Even though women's rights and status are protected under laws, in reality, these backward ideologies are still deeply entrenched in the perception of many Vietnamese people and silently affect their actions and behaviours. In the field of labor, Lam and Laura⁸ write:

- 'It is clear that the pervasiveness of Confucianism with its deeply entrenched patriarchal persuasion, has been underestimated in regard to its capacity to create barriers to success which **inevitably** disadvantage and discriminate against women on many levels, while simultaneously advantaging the male gender in employment with easy access to sociocultural opportunities for status and pecuniary benefits.' (p. 2)

This also happens in the private sphere. An example of the manifestation of the patriarchal belief is domestic violence against women. Many husbands even believe that it is normal to use physical violence to 'teach' their wives. Indeed the following incident actually happened:

- 'men present at the trial of a man who was convicted and sentenced to 9 months' jail for wife battering reportedly demanded "he beats his spoiled wife, why is he imprisoned together with thieves and robbers?"' (6, p. 18)

Second, gender inequality occurs because of prejudice against women. Indeed, the belief that 'men are better than women' is deeply entrenched in the minds of many Vietnamese people. This belief is also expressed in workplaces. For example, 'men are better or efficient than women at work' or 'men are better leaders.' ISDS² confirms this:

- 'From early childhood, people are conditioned to believe that men work more effectively than women and women's work capabilities have not entered the public consciousness yet.' (p. 57)

Perceived Limitations of the Law on Gender Equality and the Enforcement of the Law from the Perspectives of Vietnamese Leaders and Lawmakers

Some Vietnamese leaders and lawmakers posit that despite the Law on Gender Equality, in practice gender inequalities still exist for several reasons⁹. First, the implementation of the law is not effective. Second, the Law on Gender Equality is comprehensive, and it requires a collaboration among all concerned.

However, in reality it is challenging to achieve this collaboration. Third, the integration of gender equality into various fields still looks like tokenism, is not of high quality, and lacks statistics for gender analysis. Fourth, many regulations in the law are too general, just orientating, and hard to implement in practice. Furthermore, there is an inconsistency between the Law on Gender Equality and other laws. Next, the prejudice against women not only exists in the consciousness of many Vietnamese people but also in that of a portion of Vietnamese cadres, especially law enforcement officials. Finally, there is a shortage of cadres with expertise and skills in gender equality as well as professionals who can integrate gender equality into various fields⁹.

In another research, the author¹⁰ found that instructions related to gender equality are not released in a timely manner. Besides this, the integration of gender equality into legislative proposals and the evaluation of this integration are not carried out effectively.

Suggested Solutions from the Perspective of Vietnamese Leaders and Legislators

Some Vietnamese leaders and legislators make the following suggestions⁹. First, the Law on Gender Equality should be revised. Furthermore, in workplaces it is necessary to establish a system of criteria for each gender with the purpose of having a fair evaluation of their achievements because although a man and a woman may have the same level of education, the paths leading to their success were different, and these paths have been affected by their genders. In addition, the supervision of gender-related projects and the enforcement of the Gender Equality Law should be done in a regular and effective manner, and this effectiveness, in turn, should be confirmed by reality. Besides this, the integration of gender equality into legislative proposals or bill drafts should be carried out under strict supervision and investigation.

It is important to note that, to these leaders, there should be a combination of different approaches, both legal and moral, to bridging the gap between men and women. In addition, it is necessary to propagate the law and policies on gender equality to raise more awareness and responsibility of the governments at different levels and of the general public⁹.

In another research, the author¹⁰ also puts emphasis on raising people's awareness of gender equality. The interesting thing is that this author suggests promoting research on "women." However, the author does not recommend any particular feminist theory or philosophy as a theoretical framework for studies on "women."

Some Articles in the Law on Gender Equality that have the Potential for Significantly Improving Gender Equality if Revised

From the perspective of Nancy Fraser's socialist feminism and through analytical reading, the author identified the following articles in the Law on Gender Equality that can considerably enhance gender equality in reality if they are revised:

First, Article 13¹ indicates that women are allowed to equally take part in wage employment:

- 'Man and woman are equal in terms of qualifications and age in recruitment, are treated equally in workplaces regarding work, wages, pay and bonus, social insurance, labour conditions and other working conditions.' (1, p. 7)

Second, Article 17³ expresses the efforts of the Government to support disadvantaged women:

- 'Poor women residing in remote and mountainous areas and being ethnic minorities, excluding those who pay compulsory social insurance, when giving birth to a child in accordance with the population policy, shall be supported as provided by the Government.' (1, p. 9)

Third, Article 13³ expresses efforts to support women by recognizing their difference and femininity:

- 'b) to train and enhance capacity and capability for female workers' [and] c) [e]mployers create safe and hygienic working conditions for female workers in some hard and dangerous professions and occupations or those that have direct contact with harmful substances.' (1, p. 7)

Similarly, Article 12² states that 'b) Female workers in rural areas shall be given credit aid, encouraged to expand agriculture, forestry and fishery according to the law' (1, p. 7).

DISCUSSION

A Summary of Nancy Fraser's Socialist Feminist Theory

Given the fact that there is still a gap between the Law on Gender Equality and the practice and the fact that suggested solutions from some Vietnamese leaders and legislators are mainly grounded in experience and reality rather than in a particular feminist philosophy or theory, the author of this article wants to offer a socialist feminist theory developed by Nancy Fraser as a theoretical framework or a philosophical dimension added to the current Vietnamese legal scholarship.

According to Nancy Fraser (11), there are two kinds of injustices: economic maldistribution and cultural misrecognition. An example of economic maldistribution is the case where a person (or a group of people) is denied access to paid or well-paid employment while an example of cultural misrecognition is the case where a person (or a group of people) is unfairly treated because of their gender or race.

The author argues that many people suffer from these two kinds of injustice simultaneously. More specifically, gender and race are two modes of collectivity that are victims of these two injustices. To redress this issue, the author argues that both economic maldistribution and cultural misrecognition should be addressed at the same time. Unfortunately, in practice, these two kinds of (in)justices are considered dissociated leading to the perception that the remedies for these two injustices are dissociated as well. More dangerously, with this perception the remedy for economic maldistribution may unintentionally jeopardize the remedy for cultural misrecognition and vice versa. The author calls this remedy an *affirmative approach*, which is not deeply effective in combating social injustices, because it cannot deal with the economic maldistribution-cultural misrecognition dilemma *and* just deals with the issue of injustice on the surface while leaving unchanged the deep foundation that generates that injustice. For this reason, she proposes a *transformative approach* where the remedy for economic maldistribution and the remedy for cultural misrecognition are mutually irreducible. The notable thing is that, in this approach, Fraser also points to the male-female dichotomy, arguing that this dichotomy is the foundation for gender inequalities and thus suggesting that this dichotomy must be destabilized to advance gender equality.

An Analysis, from Nancy Fraser's Socialist Feminist Perspective, of the Law on Gender Equality in Vietnam and some Comments on Suggested Solutions by Vietnamese Leaders and Law Makers

From Nancy Fraser's socialist feminist perspective, there are three issues regarding the Law on Gender Equality in Vietnam to consider:

First, although the Law on Gender Equality allows women to equally take part in wage employment, it is too general to reflect the nature of this employment. As indicated in Article 13 (1),

- 'Man and woman are equal in terms of qualifications and age in recruitment, are treated equally in workplaces regarding work, wages, pay and

bonus, social insurance, labour conditions and other working conditions.’ (1, p. 7)

That said, in reality in many sectors it is employers who pay their employees, not the government, and hence they decide their own way of treating female workers, ranging from recruitment, payments, gendered labour division, to working conditions and so on. The law does not address this issue and thus does not specify a particular regulation to deal with possible unfair treatment of women in this aspect. In reality, as indicated above, even though by law women are equal to men in wage employment, there are income disparities disadvantaging women. Law makers and policy makers should look deep into this issue. If not, their efforts to achieve gender equality in economic fields may overlap what Nancy Fraser calls an affirmative *approach*. She writes that

- ‘affirmative redistribution to redress gender injustice in the economy includes affirmative action, the effort to assure women their fair share of existing jobs and educational places, while leaving unchanged the nature and number of those jobs and places.’ (11, p. 89)

The affirmative approach does not deal with the issue thoroughly because

- ‘[a]imed primarily at combating attitudinal discrimination, it does not attack the gendered division of paid and unpaid labour, nor the gendered division of masculine and feminine occupations within paid labour.’ (11, p. 89).

Second, although it is helpful to support disadvantaged women, Fraser would say that this should be done with caution. If not, the remedy for (economic) maldistribution may unintentionally jeopardize the remedy for misrecognition and vice versa. For example, Article 17 (3) says:

- ‘Poor women residing in remote and mountainous areas and being ethnic minorities, excluding those who pay compulsory social insurance, when giving birth to a child in accordance with the population policy, shall be supported as provided by the Government.’ (1, p. 9)

Although this item expresses the good intention of the Government to support disadvantaged women from remote areas, and especially women from ethnic minorities, this effort, from Fraser’s perspective, may unintentionally mark these women as ‘deficient.’ Indeed, in a somewhat similar scenario of a Western welfare

program, Fraser says that this scenario may ‘mark women as deficient and insatiable, as always needing more and more (11, p. 89). In this scenario, the remedy for economic maldistribution may ruin the remedy for misrecognition because it may unintentionally demean these disadvantaged women. In another example, Article 13 (3), states that

- ‘b) to train and enhance capacity and capability for female workers’ [and] c) [e]mployers create safe and hygienic working conditions for female workers in some hard and dangerous professions and occupations or those that have direct contact with harmful substances.’ (1, p. 7)

Again, it is obvious that the law expresses the good intention of the Government in protecting women by recognizing their difference and femininity. However, on the other side of the coin, this effort may unintentionally mark women as ‘weak’ and ‘needing protection’ or women as ‘inefficient’ and ‘always need training.’ This recognition may have an unintended effect by adding more prejudice against women on the part of employers. More importantly, the law protecting women may create fear for employers. Indeed, as presented earlier, many employers, due to fear of women’s potential six-month maternity leave, are reluctant to employ women. Even if they do, they will pay women less than men (13). In this scenario, the gender recognition may clash with the economic distribution because the law primarily aims at (re)valuing women’s femininity and hence supporting women may have a negative impact on their income. Third, efforts to support women by recognizing their difference and femininity may lead to the risk of perpetuating the male-female dichotomy, which, to Fraser, is the invisible main cause of gender inequalities. For example, Article 12(2) says, ‘b) Female workers in rural areas shall be given credit aid, encouraged to expand agriculture, forestry and fishery according to the law’ (1, p. 7). The law does not articulate why female workers are encouraged to do this. Perhaps, it is because the Government recognizes that women’s femininity and their virtues are suitable for these occupations. Again, recognizing women’s femininity and virtues is helpful. Nevertheless, if this is not done cautiously and skillfully, this may essentialize the differentiation between men and women and hence reinforce the gender binary, which to Fraser is the main cause of gender inequalities. In reality, as presented earlier (2), for cultural reasons, there is already an obvious gendered labour division. Even, there is a labour division within the same occupation

and, yet worse, women have to undertake more tasks than men (2). Now the effort to promote female occupations indicated in the law may unintentionally reinforce this division. Therefore, the attempts to recognize women's femininity or virtues should accompany the awareness of this issue. If not, the well-intentioned efforts may overlap what Fraser (11) calls *affirmative recognition*, which refers to 'the effort to assure women respect by revaluing femininity, while leaving unchanged the binary gender code that gives the latter its sense' (p. 89). In this scenario, gender inequality is not effectively redressed because the dichotomy between men and women is not actually disrupted. It is important to note that some Vietnamese leaders and legislators, as mentioned above, suggested establishing a set of criteria for men and women for the sake of a fair evaluation of their achievements. Fraser might also give a similar warning that they should be cautious while making that suggestion because if it is not done skilfully these (proposed) strategies may unintentionally essentialize the difference and hence the binary between the sexes, which ends up widening the gap between men and women instead of narrowing it.

Proposed Solutions, from Nancy Fraser's Socialist Feminist Perspective, to the Gap between the Law on Gender Equality in Vietnam and Practice

Given the limitations of the affirmative approach to addressing gender related issues, Nancy Fraser (11) proposes the transformative approach to dealing with gender inequality. In this scenario, the remedy for economic maldistribution and the remedy for cultural misrecognition are mutually irreducible. These two remedies interact with each other. Fraser explains that this transformative approach is a blend of socialism in the economy and deconstruction in the culture, arguing that this approach is promising in addressing gender inequality. With this approach, the three issues of gender inequality in Vietnam mentioned earlier might be dealt with in a more effective way. First, the issue of economic maldistribution should be deeply explored. More specifically, in terms of gendered inequalities in wage employment, the nature of the labour division and income inequalities that disadvantages women should be brought to the fore, and consequently there should be a revision of the Law on Gender Equality to assure a fair treatment of women in this aspect. Second, improving women's economic benefits and building a good image of (disadvantaged) women must go hand in hand. Third, the

dichotomy between men and women should be destabilized. In the context of Vietnam, especially in relation to the Law on Gender Equality, these proposals from Fraser's socialist feminist perspective will be articulated more specifically in the following section.

CONCLUSIONS

This article has presented the issue of gender (in) equality in Vietnam. Although Vietnam has achieved considerable results in bridging the gap between men and women, gender inequalities still exist in many aspects. The main cause identified is that patriarchal or backward ideologies are still deeply entrenched in the society. Although Vietnam has the Law on Gender Equality, gender inequality is not absolutely corrected in practice. Some of the main causes are that many articles in the law are still too general and hard to implement and that the enforcement of the law is not under strict supervision while a portion of cadres and the general public still have a prejudice against women. To deal with this problem, some Vietnamese leaders and lawmakers suggest revising the Law on Gender Equality, integrating gender equality into legislative proposals, and establishing a set of criteria for each gender in workplaces in order to have a fair evaluation. However, these suggestions are primarily grounded in reality and experience, not in a particular feminist theory. For this reason, this article added one dimension to dealing with this issue by introducing the socialist feminist theory developed by Nancy Fraser. There are three *striking* features of this socialist feminist theory that make this socialist feminist theory worth considering and should be integrated into legislative proposals or current Vietnamese legal scholarship:

First, this transformative model points to the root of gender inequality: the male-female dichotomy deeply embedded in patriarchal ideologies. Although many Vietnamese people, researchers included, consider these backward ideologies the main cause of gender inequalities, few people recognize or mention that the male-female dichotomy is the heart of this problem. Fraser's socialist feminist theory not only points to this but also gives a warning that efforts to correct gender inequalities and recognize women may unintentionally risk perpetuating this dichotomy or leaving it unchanged and hence the results of gender equality achieved would be limited. With regard to the Law on Gender Equality, to avoid the possibility of perpetuating the man-woman dichotomy, which is actually the foundation of gender disparities, from Fraser's socialist feminist perspective, I propose the law should be revised in some aspects. For example, Article 12(2)

says, 'b) Female workers in rural areas shall be given credit aid, encouraged to expand agriculture, forestry and fishery according to the law' (1, p. 7). Instead, from Fraser's feminist perspective, to avoid the possibility of essentializing the difference between men and women, the article should indicate that *both* male and female workers are supported in this case. In another instance, Article 32 (2e) states, 'To support female workers who participate in the training and fostering activities and bring along their children less than 36 months of age' (1, p. 18). Similarly, on the foundation of Fraser's socialist feminism, in my opinion, the article should support *both* male and female workers in bringing along their children in this case because this is a way of disrupting the male-female dichotomy to enhance gender equality. It also means that instead of just supporting women to fulfill their traditional duties better, the law should also encourage or support men to *do* work traditionally done by women. Again, it is a way to destabilize the dichotomy between men and women and thus helps promote gender equality. Second, this feminist theory offers a transformative approach that can address the dilemma of economic (re)distribution and cultural recognition in which women are assured of equal economic opportunities while not being stigmatized. It also means that the law should be revised in some aspects and in such a way that assures (disadvantaged) women both economic benefits *and* good images. For example, Article 17 (3) says:

- 'Poor women residing in remote and mountainous areas and being ethnic minorities, excluding those who pay compulsory social insurance, when giving birth to a child in accordance with the population policy, shall be supported as provided by the Government.' (1, p. 9)

It is not clear what it is meant by 'support' in this case. Perhaps it is mainly financial support. Although this comes from the good intention of the Government, from Fraser's feminist perspective this may unintentionally mark women from ethnic groups or other disadvantaged women as 'poor' and 'deficient' in the eye of some people. To avoid this, the law should clarify this support and, more importantly, should add articles to divert this support from being financial to being educational and developmental in the long term. That is, instead of providing these women with an amount of money when they give birth, the Government should help them improve their jobs and their income in the long run. Although Article 14 (5b)

mentions the support for women in vocational training, 'To assist female workers in rural areas in vocational training under the law' (1, p. 8), it is still general. The law should add specific articles aiming to facilitate ethnic minority women's access to labor markets in general and well-paid jobs in particular. Simultaneously the Law on Gender Equality should have articles promoting these women's access to educational programs regarding health care. Although Article 17 (1) indicates that men and women are equal in 'participating the activities of education and communication on health care, reproductive health and in using health services' (1, p. 9), it does not put emphasis on how to help ethnic minority women in rural areas have access to these programs. The law should add articles to specify this. In short, these suggestions aim at creating sustainable development for women from ethnic groups or other disadvantaged women, and sustainable development is synonymous with building a *good image* of these women: from 'being poor' and 'needing support' to being 'capable' and 'autonomous' in the eye of others. This is also a way of deepening gender equality, from Fraser's socialist feminist perspective.

The third striking point is that the model of *transformative* economic (re)distribution advocated by Nancy Fraser is helpful because it brings to the fore the fact that many women are still disadvantaged in various forms although under the law they are equal to men in participating in wage employment. More specifically, Fraser's theory suggests looking deep into the nature of the jobs women have and the payment they receive *in reality* in comparison with that of men in order to detect the *foundation* for this inequality, despite the Law on Gender Equality, and therefore finds a way to disrupt that foundation. In other words, Fraser's theory, when applied in the context of Vietnam, would suggest that legislators should add more specific articles into the Law on Gender Equality to regulate the practices of enterprises in such a way that deals with the discrepancy between the quantity and the quality of many women's work as well as the gender-based division of occupations within paid labour. Although Article 40 (3c) states that

- '[i]mplementing discriminatory allocation of job between man and woman leading to inequality in income or applying different pay levels for workers of the same qualifications and capacity for gender reasons' (1, p. 22)

is a violation of the Law on Gender Equality in the field of labour, in reality this inequality still happens

(13). From Fraser's feminist perspective, I suggest that the deep foundation leading to this inequality should be detected. Certainly, doing this requires further research. However, the results of the research would be rewarding because it would form the base for the revision of the law in this aspect.

All in all, Fraser's socialist feminist theory is helpful in the context of Vietnam because it (a) offers a theoretical framework for research on gender equality and law and hence enriches Vietnamese legal scholarship, (b) shows the root of gender inequalities, namely the male-female dichotomy, which few Vietnamese people detect or mention, (c) helps improve women's economic benefits and simultaneously avoid the risk of demeaning disadvantaged women—the risk that may be overlooked or underestimated by many Vietnamese people, and (d) offers a theoretical foundation on which some articles in the Law on Gender Equality could be revised with the ultimate purpose of maximizing gender equality *in reality*.

In conclusion, given its significance and striking relevance to gender matters, Fraser's feminist theory can add one dimension to Vietnamese legal scholarship and can also be used as a theoretical framework for research related to law, gender equality, and social justice in Vietnam. It is also important to note that any theory, when applied in reality or put into practice, needs flexible adaptation or creative development to suit a particular context. Fraser's feminist theory presented in this article is not an exception. Nevertheless, the contribution of this theory to the current Vietnamese legal scholarship is valuable in that it adds a dimension to view the issue and forms the foundation for *preliminary* suggestions articulated above. Certainly, it requires further research on how to translate this theory into specific strategies in practice regarding gender and law in Vietnam, and that is beyond the scope of this article.

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COMPETING INTEREST

The author declares that they have no conflicts of interest.

AUTHOR'S CONTRIBUTION

All content of the article is done by the author only.

REFERENCES

1. The National Assembly. The law on gender equality [online]; 2006; Available from: http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=76089&p_count=96243&p_classification=05&p_classcount=3262.
2. Institute for Social Development Studies. Social determinants of gender inequality in Vietnam. Hanoi: Hong Duc Publishing House; 2015;.
3. International Labour Organization (ILO). Thị trường lao động: Đại dịch COVID-19 hấn sâu bất bình đẳng giới hiện hữu; 2021. tạo thêm những bất bình đẳng mới ở Việt Nam [online] [cited Oct 8 2021]; Available from: https://www.ilo.org/hanoi/Informationresources/Publicinformation/Pressreleases/WCMS_774577/lang--vi/index.htm.
4. Wells M. Vietnam: gender situation analysis; 2005;.
5. International Labour Organization (ILO). Gender equality: Vietnamese women are increasingly well prepared for decision-making roles in businesses [online]; 2020 [cited Oct 8 2021]; Available from: https://www.ilo.org/hanoi/Informationresources/Publicinformation/Pressreleases/WCMS_761182/lang--en/index.htm.
6. The World Organisation Against Torture (OMCT). Violence against women in Vietnam; 2001;.
7. Bình T. Women's Union. Định kiến giới, bất bình đẳng giới: Rào cản cần xóa bỏ [online]; 2020 [cited Oct 8 2021]; Available from: http://phunutinh.thaibinh.gov.vn/Tin-Tuc/binhdanggioi/binhdanggioi/1358_Dinh-kien-gioi,-bat-binh-dang-gioi--Rao-can-can-xoa-bo.
8. Lam TL, Laura R. Reflections on the Politics of Power Patriarchy in Vietnamese Gender Employment. *Asian Journal of Social Science Studies*. 2017; 2(1): 1-10;.
9. Cổng Thông Tin Điện Tử Công Đoàn Việt Nam. Bình đẳng giới tại Việt Nam: Còn nhiều khoảng trống. [Online]. 2020 [cited 2021 June 2]; Available from: <http://www.congdovan.vn/tin-tuc/cong-tac-nu-cong-gioi-510/binh-dang-gioi-tai-viet-nam-con-nhieu-khoang-trong-499257.tld>.
10. Thu NT. Vấn đề phụ nữ và bình đẳng giới ở Việt Nam hiện nay. [Online]. 2020 [cited 2021 Oct 14]; Available from: https://dtcblehongphong.hanoi.gov.vn/khoa-ly-luan-co-so/-/view_content/3909039-van-de-phu-nu-va-binh-dang-gioi-o-viet-nam-hien-nay.html.
11. Fraser N. Justice Interruptus. From redistribution to recognition? UK: Routledge; 1997;.
12. The Asian Foundation. Advancing women's empowerment and gender equality in Vietnam. Hanoi: Prime Centre; 2018;.
13. Hoa HT, Van Hieu P, et al. Research on Income Inequality by Gender in Vietnam. *International Journal of Human Resource Studies*. 2020; 10(3): 206-222;.
14. International Labour Organization (ILO). Giới và việc làm: Bất bình đẳng giới không phải là điều đúng đắn và không tốt cho Việt Nam. [Online]. 2021 [cited 2021 Oct 8]; Available from: https://www.ilo.org/hanoi/Informationresources/Publicinformation/newsitems/WCMS_775480/lang--vi/index.htm.
15. Quế HTK. Phụ nữ: những ưu ái và thiệt thòi- nhìn từ góc độ xã hội pháp lý. *Nghiên Cứu Lập Pháp*. [serial online]. 2003 [cited 2021 June 2]; Available from: <http://lapphap.vn/Pages/tintuc/tinchitiet.aspx?tintucid=209061>.

Xóa bỏ khoảng cách giữa luật bình đẳng giới và thực tế tại Việt Nam: Một phương pháp được đề xuất từ quan điểm nữ quyền xã hội chủ nghĩa

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TÓM TẮT

Trong nhiều thập kỷ qua, nhờ vào nỗ lực to lớn của Nhà nước cùng với những đạo luật và chính sách về giới mà Việt Nam đã đạt được nhiều thành tựu đáng kể về bình đẳng giới. Theo luật, phụ nữ và nam giới tại Việt Nam bình đẳng trong mọi lĩnh vực. Tuy nhiên, trên thực tế, bên cạnh những thành tựu nêu trên thì bất bình đẳng giới vẫn còn tồn tại. Một trong những nguyên nhân chính được nhìn nhận là những định kiến lạc hậu cùng với tư tưởng trọng nam khinh nữ, dù vô hình, vẫn còn gắn sâu trong suy nghĩ và hành vi của nhiều người Việt Nam, và trong một mức độ nào đó làm giảm tính hiệu quả của việc thực thi Luật Bình đẳng giới. Nhiều nhà nghiên cứu và lập pháp đã bàn luận vấn đề này. Tuy nhiên, dường như vẫn còn thiếu những giải pháp dựa trên quan điểm của các lý thuyết nữ quyền. Do đó, có thể nói rằng rất cần thiết để đưa lý thuyết nữ quyền vào luật học Việt Nam. Vì vậy tác giả của bài viết này giới thiệu một lý thuyết nữ quyền mang tính xã hội chủ nghĩa được phát triển bởi Nancy Fraser vì lý thuyết này được tác giả phân tích và nhận thấy là sẽ có thể giúp giải quyết nhiều vấn đề bất bình đẳng giới tại Việt Nam. Một trong những đặc điểm nổi bật của lý thuyết này là nó chỉ ra được vấn đề lưỡng phân giới, xem đó như là cội rễ của bất bình đẳng giới, và vì thế lưỡng phân giới cần được chú ý để xóa bỏ. Ngoài ra, phương pháp *transformative approach* trong lý thuyết của Nancy Fraser cũng có thể giúp thúc đẩy bình đẳng giới triệt để hơn. Về mặt cấu trúc, bài viết này gồm các phần chính như sau: phần đầu miêu tả khái quát thực trạng về bất bình đẳng giới tại Việt Nam, nêu ra những nguyên nhân chính của bất bình đẳng giới trên thực tế này và đưa ra những giải pháp từ quan điểm của một số nhà lãnh đạo và lập pháp của Việt Nam; phần kế tiếp trình bày lý thuyết nữ quyền mang tính xã hội chủ nghĩa của Nancy Fraser và đưa ra một số phân tích về Luật Bình đẳng giới tại Việt Nam theo quan điểm của lý thuyết nữ quyền này; phần kết luận nhấn mạnh lại những điểm nổi bật của lý thuyết nữ quyền xã hội chủ nghĩa của Nancy Fraser và đưa ra một vài góp ý cho Luật Bình đẳng giới tại Việt Nam trên cơ sở lý thuyết nữ quyền này và cuối cùng gợi ý rằng lý thuyết nữ quyền mang tính xã hội chủ nghĩa của Nancy Fraser nên được đưa vào luật học Việt Nam vì nó có thể góp thêm một cơ sở lý thuyết cho những nghiên cứu có liên quan đến luật và bình đẳng giới tại Việt Nam.

Từ khoá: Bình đẳng giới, luật, nữ quyền, xã hội chủ nghĩa, lưỡng phân

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