

DEATH PENALTY IN VIETNAM'S FEUDAL CRIMINAL LAW

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Abstract

Capital punishment in Vietnam's feudal history is heavily influenced by China's feudal law, which represents the social context's objectivity and identical features.

The death penalty in Vietnam's feudal criminal law is exceptionally severe and applied to different crimes, including corruption; furthermore, there is no distinction between crime and ethical violations. The capital sentence is conducted by different methods such as lingchi (slow slicing), the most brutal execution in the death penalty.

Some provisions mitigate the criminal liability by considering the accused's relatives and the disadvantaged. High-profile people's prosecution requires the majesty's authority prior to standing trial and after sentencing the accused.

1. Capital punishment in Vietnam's feudal criminal law

Through the feudal dynasties of Ngo - Dinh - Tien Le - Tran - Hau Le - Nguyen, the death penalty was gradually improved to suit the social context.

1.1. The Ngo, Dinh, and Early Le Dynasty

Ngo Dynasty: In 938, Ngo Quyen was the people's leader to defeat the Southern Han army in the battle of Bach Dang River, officially ending nearly a thousand years of Chinese domination, opening a long period of Vietnam's independence.

From 938 to 965, during the period between 944 and 950, there was another king called Duong Binh Vuong (Duong Tam Kha). Unlike the later monarchic dynasties of Vietnam, the Ngo emperors still proclaimed the title of king but not yet proclaimed the emperor in the whole territory they ruled. People living in this period did not record the death penalty.

Dinh Dynasty: Beginning in 968, after Dinh Tien Hoang finished the rebellion to reunify the country. He decided that the national title was Dai Co Viet, moved the citadel to Hoa Lu. The Dynasty ended in 980 when Dinh Phe De gave the throne to Le Dai Hanh.

The death penalty of this period: The king wanted to use the authority to overpower the people, put a large cauldron in the courtyard, raised a ferocious tiger in the grave, ordered that "anyone illegally will be charged with leaving the cauldron to cook or give away for tigers. People are afraid of submission."²

Tien Le Dynasty started after Le Dai Hanh took the throne to replace the Dinh in 980 and ended in 1009 when Le Long Dinh died.

The death penalty: During the reign of King Le Long Dinh (1005 - 1009), the king killed others to rob the throne and liked brutal lust. The king liked to kill people, mortal people were executed, or sent tangled grass into him and burned so that the fire was near death; or asked Lieu

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² *Đại Việt Sử Ký Toàn Thư* (NXB Hồng Đức, 2020) 155.

Thu Tam to take a short knife and slash the knife to pieces so as not to die quickly, that person screamed, then Thu Tam said that he was not used to dying, the king laughed.

If they captured the enemy, they would send them to the riverbank. When the tide receded, sent workers to plunge under the water, or forced to climb up to a high tree, then cut the stump for fallen trees, people fell to die. The king came to see and enjoyed the scene. Used to go to Ninh river (today is Day river part of Chuong My district, Hanoi city), that river was full of snakes, the king ordered him to tie people to the side of the boat, walking in the middle of the stream wanted to let the snake bite to death.

1.2. The Ly Dynasty

The Ly Dynasty's feudalism began when Ly Cong Uan took the throne in October 1009 after gaining power from the Tien Le Dynasty. This dynasty passed through nine emperors and ended when Ly Chieu Hoang, then only seven years old, was forced to abdicate to give the throne to her husband Tran Canh in 1225.

The Ly dynasty existed for more than 200 years. It was identified as the first state in Vietnam to officially have a legal system since independence after the Northern colonial period, but the Ngo, Dinh, and Tien Le dynasties³.

In 1042, Ly Thai Tong promulgated the book *The Letter*, and this is the first law book of a feudal dynasty of Vietnam. The birth of *The Letter* and the Ministry of Justice and the Penalties body is considered a step forward State management organization of the Ly Dynasty, although its effectiveness is still limited.

The death penalty: The “Ten Crimes” institution in the Ly Dynasty began to be recognized, the origin of the “Ten Crimes” in the death penalty law of China (550-577), The Ten Crimes was called “Ten Abominations”, later inherited, and developed by the Sui Dynasty. However, until the Tang Dynasty, the “Ten Abominations” were institutionalized into written law, including 1. Rebellion; 2. Great sedition; 3. Treason; 4. Parricide; 5. Depravity; 6. Great irreverence; 7. Lack of filial piety; 8. Discord; 9. Unrighteousness; 10. Incest⁴

For the crime of anti-rebellion: In 1150, King Ly Anh Tong adopted the Edict: Prohibit eunuchs from entering the palace arbitrarily, whoever commits it will be guilty of death, if not careful to let others enter the palace, it is also guilty as so. Prohibit the court officials from traveling to the princes' house: In the palace, it is forbidden to gather together five or three people to discuss disparagingly, guilty of the violation. Those who commit crimes outside the armory garrison of Do Phung national defense will punish 80 staff and criminals; If anyone come in that gable, he/she will be executed. The army guard in the garrison had an edict and was only allowed to hold a weapon. Without the edict, he would arbitrarily carry it beyond the ground; then, he would be executed⁵.

Under China's Tang Dynasty's influence, criminal law for the Ly law is not a complete copy. The Law of the Ly Dynasty, due to the profound influence of the Buddha's history, exuded

³Truong Hữu Quỳnh, Đinh Xuân Lâm, Lê Mậu Hãn, *Đại cương lịch sử Việt Nam* (NXB Giáo dục, 2008) 127-129.

⁴*Đại Việt Sử Ký Toàn Thư* (NXB Hồng Đức, 2020)229.

⁵*Đại Việt Sử Ký Toàn Thư* (NXB Hồng Đức, 2020) 300.

a profound humanitarian spirit such as the elderly aged 70 years and over, children under 15 years old and the sick, the king's relatives. If they have sinned, they will atone for sin. If they commit one of the ten crimes above, the king will not attend. It is a significant feature in the criminal law of the Ly Dynasty.

The use of the death penalty under the Ly dynasty was not as severe and cruel as the feudal Chinese dynasties, which is reflected in the following facts: The fact that King Ly Thanh Tong forgave the death of the king of Champa, Che Cu, in fact, by law, Che Cu is sure to be executed.

Those who commit treason against the “Ten Abominations” in the country, by law, must be executed. In the case of “Dam Dam Lake” in 1095, King Ly Nhan Tong also once forgiven Le Van Thinh. In this incident, Ngo Sy Lien discussed: the ordinary people try to usurp the throne to kill the king and be exempt from death is wrong in the king's crime of Buddhist devotion⁶.

Besides, some other acts that should be executed but the offender is still free from death, committing great disrespect, murder, such as the case: In 1158, Prince Long Workshop committed adultery with the king's palace concubine. King Ly Anh Tong still spared Long Workshop's death and became a civil servant.

Under Ly Thai Tong, the murderer was fined only 100 staff; he liked to face 50 words, he was used as armor. There are even cases of intentional death that is still not considered a crime. It can be said that with immense tolerance, the criminal law of the Ly dynasty created a feature that the feudal law at that time did not have, that was intensely focused on the reform of prisoners. Based on this advanced feature, we can observe that, under the Ly dynasty, the death penalty used was only reluctant because it was a penalty that did not give the offender a chance to rehabilitate⁷. Moreover, “killing” is also a Buddhist taboo, the root foundation of the Ly law.

1.3. The Tran Dynasty

The Tran Dynasty was a feudal monarchy in Vietnamese history, from Tran Thai Tong (1225 - 1258) to Tran Thieu De (1398 - 1400) was 12 kings with 175 years. The dynasty is famous for its glorious victories in Vietnamese history, with three victories over the invading Nguyen Mong.

The death penalty in this period was very severe, considered a useful tool for Tran rule.

In 1230, to amend the law of ceremonies, including 20 volumes; in 1244, King Thai Tong intended to re-establish the laws, the Tran's permission was that every person who committed theft must cut off his hands, be tortured by the elephant⁸.

The death penalty “Lingchi” was applied for the first time. (Lingchi, also known as slow slicing, brutal feudal punishment, killing offenders by cutting off limbs, cutting off pieces of meat to die gradually).

⁶*Đại Việt Sử Ký Toàn Thư* (NXB Hồng Đức, 2020) 254.

⁷Phạm Văn Beo, *Về hình phạt tử hình trong Luật hình sự Việt Nam* (NXB Chính trị Quốc gia, 2010) 106.

⁸*Việt Nam lược sử* (NXB Văn Học, 2015) 130.

In 1283, the king punished the high priest serving Tran Lao and allowed Lao to atone for 1,000 mandarins and soldiers; The trial of the mausoleum of the name Mãnh's being Lao's slave in the East market is due to the anonymity that defames the state⁹.

In the case that Đấng Long was a close relative of the king, a brilliant literary man, had been noted for promotion, the king wanted to be an academy, the emperor prevented it. Long had a discontent in his heart, surrendered to the enemy. When he lost, he was arrested and slashed to advertise to everyone¹⁰.

The Tran law prohibited gambling. In 1296, Senior Lieutenant Nguyen Hung gambled and was punished with staff to die. In 1347 Bao Uy Vuong Hien was guilty, sent out as an adventurous general in Vong Giang town, and then sent someone to kill him at Van Nu river, Truong Yen highway¹¹ (now in Yen Mo, Ninh Binh province).

The death penalty of Tran feudalism was very harsh; in addition to crimes that traditionally could be executed, such as “Ten Abominations”, murder, robbery, counterfeit money would also be executed. Therefore, no one traitor can survive, not even the king or those of the royal family.

In addition, the implementation process is still humane: In 1289, after the 3rd victory over the Nguyen Mong army invaded the third time, they punished the enemy soldiers. As a palace to atone for sin, the officer commits a severe offense and handles it. Like when the defeated enemy caught the boxes of the enemy's goods, the King sent them to burn to calm the traitors.

It can be said that the death penalty under the Tran dynasty has a rigorous content and is considered the most effective tool for government purposes. In addition to the execution forms used during the Tran dynasty, such as elephant thickening, necking, and bestowing to suicide with poison, “lingchi” was first used in our country at this time.

Justification for the severity and the brutal execution of the death penalty, because the Tran conquered the Ly king's throne, it was impossible to set the rules of division, each court changed each way. and the law is often very harsh¹².

1.4. The Later Le Dynasty

The Hau Le Dynasty (1427-1789) was founded by Le Thai To, distinguished from the Tien Le Dynasty (980-1009), founded by Le Dai Hanh at the end of the 10th century.

The Hau Le Dynasty consists of 2 phases: The Le Dynasty (1428-1527): Lasting for 100 years, starting from the victory of the Lam Son uprising, Le Loi established a new dynasty and ended when Mac Dang Dung's power abolished King Le Cung Hoang and established the Mac Dynasty. Le Trung Hung Dynasty (1533-1789): Lasted for 256 years, starting when Lieutenant General Nguyen Kim established Le Duy Ninh's throne room, Le Trang Tong, in Ai Lao to restore the Hau Le Dynasty; ended when Le Chieu Thong fled to China.

⁹*Đại Việt Sử Ký Toàn Thư* (NXB Hồng Đức, 2020) 377.

¹⁰*Đại Việt Sử Ký Toàn Thư* (NXB Hồng Đức, 2020) 398.

¹¹*Đại Việt Sử Ký Toàn Thư* (NXB Hồng Đức, 2020) 472.

¹²Phạm Văn Beo, *Về hình phạt tử hình trong Luật hình sự Việt Nam*(NXB Chính trị Quốc gia, 2010)107.

- *Death penalty before Quoc trieu hình luật's adoption*

During the Le dynasty, the punishment imposed by Le Thai To was based on the Tang law with a system of five forms: Xuy, cane, map, save, death. For capital punishment, it is divided into three steps corresponding to each type of crime: strangling and slashing; Crime of beheading, and lingchi. In 1428 ordered: Roads, anyone who saw the puppet officials of the ground troops and the people escaping from the cities without explanation would cut. Again, ordered the revealing revelations for the deformed people back and forth, whoever dared to tolerate the deformities and the puppet army to escape, the revealing and the guard would behave. The king is a strictly forbidden sight. Anyone who hides a Ming mandarin of one or more people will kill without forgiveness¹³.

Although the law only provides for the three above forms, in fact, a case of crime is executed by poison. That is, Trần Cảo was given poison when he attempted to commit treason in 1428.

Besides, the issues related to the case of "Eight Deliberations" were considered under the reign of King Le Thai To. Those who belong to the "bowl of recommendation" that commit a crime must first ask for deliberation. When the recommendation is finished, they must first ask for a review by the king. Those who commit offenses or less than that can be exempt from the penalty. However, those who commit the death penalty are not entitled to the provisions of the "eight decree".

"Eight Deliberations" includes 1. Relatives of the king; 2. Old acquaintances of the king; 3. Individuals with great virtue; 4. Individuals with great ability; 5. Meritorious individuals; 6. High officials; 7. Individuals exceptionally zealous at their government duties; 8. Guests of the king (i.e., the descendants of preceding imperial families).

Le Chi Vien case: On July 27, 1442, King Le Thai Tong patrolled in the East, approved troops in Chi Linh city, Hai Duong. Nguyen Trai welcomes the king to live at Con Son pagoda, where Nguyen Trai lives. On August 4 (lunar calendar), the king returned to Le Chi Vien in Gia Dinh district (now Dai Lai village, Dai Lai commune, Gia Binh district, Bac Ninh province). Nguyen Thi Lo, the concubine of Nguyen Trai, is a beauty that is often literate. The king heard the voice, had previously invited and conferred a ceremony of study, day and night for most of the party.

During the tour to the East, Thai Tong returned to Vai camp in Dai Lai village, Gia Dinh district, suffered from malaria, Nguyen Thi Lo spent the whole night, the king died, the officials secretly returned to Kinh, everyone saying that Nguyen Thi Lo killed the king, arrested and killed Nguyen Thi Lo, drowned in the Red River.

On August 16, 1442, the court arrested and killed Nguyen Trai, exorcised the three clans; a total of approximately 400 people were killed after the tragedy. In 1464, King Le Thanh Tong justified Nguyen Trai¹⁴. It can be said that the Le Chi Vien case is a shocking tragedy in the history of feudalism in Vietnam.

¹³*Đại Việt Sử Ký Toàn Thư* (NXB Hồng Đức, 2020) 658.

¹⁴*Đại Việt sử ký toàn thư* (NXB Khoa học Xã hội Hà Nội, 1993) 405.

- *The death penalty provided in Quoc trieu hinh luat*

The imperial court of law was promulgated by King Le Thanh Tong in 1483, the kings of the LeMat dynasty supplemented more or less, promulgated in 1777, the Ministry of National Court of Criminal Law included six volumes, 722 articles.

The criminal dynasty, also called the Le Dynasty Criminal Law or Hong Duc Law is the most critical orthodox criminal code of the post-Le feudal dynasty (1428 - 1789), the mostconsiderable legalization work in Vietnamese feudal history systematized the provisions of case law and a number of legal norms that have reflected the traditional oriental values of the Vietnamese people.

Due to the influence of the rule of law, a common feature of the ancient Eastern legal systems, the Criminal Kingdom had lost the line between morality and the law. The consequence of this reality was the criminal regulation of even acts that today are only morally condemned, but at that time, the group “Crimes” and executed.

Quoc trieu hinh luat also imposes hefty penalties; out of the 660 laws that regulate crimes of the Ministry of Justice, 144 regulating criminal acts with the death penalty (about 22%).

The death penalty has three levels: Hanging, slashing is the first order; beheading is a step; slow slicing is a level, depending on the crime’s seriousness.

Determining the principle of the death penalty for the group of people in the “Eight Deliberations”: Before deciding to die, the judges must clearly state the crime and the punishment, what to do, make a copy, and present it to the king for the king to judge (Article 4).

Most of the death penalty offenses are related to the safety of the commune, the safety of the king and the royal family, the dignity of the royal lineage, such as Whoever freely climbed over a wall condemn slashing. The Guardians (the soldiers guarding the palaces in the Imperial City) took someone who was not a guard instead of their name and was also substituted for the palace¹⁵.

“Ten Abominations”, the ten capital offenses, are:

- Rebellion: to overthrow the current regime.
- Great sedition: to damage or destroy royal temples, tumuli, or palaces.
- Treason: To defect to an enemy state, usually carrying out national secrets.
- Parricide: to harm or murder one's own parents and grandparents; to murder one's own or husband's elder relatives.
- Depravity: to murder three or more innocent people; to disembowel a victim's body after committing a murder; to produce poison and use it.
- Great irreverence: to show disrespect to the Emperor or his family.
- Lack of filial piety: to maltreat one's parents or grandparents, or to procure entertainment during periods of mourning (up to three years for one's parents).

¹⁵Article 52; 53 *Quốc Triều hình luật* (NXB Tư pháp, 2013) 60.

- Discord: to harm or sue one's husband or elder relatives.
- Unrighteousness: to murder one's superiors, mentor, or local government officials.
- Incest: to have affairs with the wives or concubines of one's father, grandfather, or other elder male relatives¹⁶.

In addition, some other offenses may also be executed, such as murder, robbery, but rape, cut off the head, stealing but rape, cutting (Article 428); Stealing with a weapon is condemned to robbery and murder, and murder (Article 429).

The provision of criminal liability to the collective for crimes of treason, great treachery, conspiracy to oppose is an act that can cause the safety of society or the safety and dignity of the King, and The royal family is subject to joint responsibility, the practitioner is executed, as in article 411: Those who conspire to trespass, who plots to do great things are condemned to beheading, the culprit and the pro-party know it must be guilty of slashing, his wife and children are confiscated as public. The bureaucracy that deliberately tolerates or hides it behaves like a criminal. Article 412: Those who plotted to betray the enemy against the enemy were executed; If he acted, then condemned the offense, those who know it are also guilty.

Death penalty applied for corruption-related crimes: Quoc trieu Hinh luat, with more than 40 articles related to anti-corruption, local officials harassing people, buying and selling cheaply, demanding ample or bribery, they demote or dismiss them and pay double compensation, Article 138 “If a mandarin violates the law, but bribes 20 mandarins (one mandarin is equal to 600 dong¹⁷) or more, he shall be charged with slashing.”

Criminal liability exemption for the elderly and children: The offenders are aged 80 or over or ten years or younger, and disabled people who commit death crimes are also entitled to this. If a person aged 90 or over or seven years old or younger commits a deadly crime, he/she cannot be executed (Article 16). In addition, for women who commit the death penalty, if they are pregnant, they must give birth after 100 days to be executed (Article 680). Women get reduced sins, or in the case of servants stealing from their masters, if they are “maidservants, they receive reduced sin.”

Exemption from criminal liability for justified defense: The landlord who beat the thief right away is not a crime (Article 450).

Mitigation of penalties for ethnic minorities: Man Lieu people (only ethnic minorities) rob each other, kill each other, the crime is less than robbery, murder one level if interpreted together then also (Article 451).

The time of the crime to benefit the criminal when applying the law, according to which “when committing the crime is not old, disabled. When they are old or disabled, they will be judged on the crime according to the law of old age, disability. When they are young, they commit crimes; when they are old, they will be judged according to the law of young age” (Article 17).

¹⁶Article 2 *Quốc Triều hình luật* (NXB Tư pháp, 2013) 41.

¹⁷<<http://thoibaotaichinhvietnam.vn/pages/xuan-binh-than-2016/2016-02-04/ngay-xuan-doc-lai-bai-ca-dao-di-cho-tinh-tien->>accessed28 January 2021.

Born in the mid-fifteenth century, in addition to the draconian provisions of the death penalty, the Criminal Kingdom has achieved outstanding value and achievements, has advanced features, and is more dominant than the previous laws and after it. With the rules to protect the rights of the people, the lower class, the servant, the aunt, the disabled. The most outstanding progress that researchers mentioned the most is the concern about the status of women, care for their rights, giving them relative equality with men in society and the husband in the family, exempting criminal responsibility for the case of primary defense worth. That is the factor that contributes to the specialness and progress ahead of the time of this law¹⁸.

1.5. The Nguyen Dynasty

The Nguyen Dynasty was the last monarchic dynasty in Vietnamese feudal history, established after Nguyen Anh ascended the throne in 1802 and ended ultimately when Emperor Bao Dai abdicated in 1945, with 143 years. The Nguyen Dynasty is a dynasty that marked many ups and downs in Vietnamese history, especially the French invasion in the mid-19th century.

Under the Nguyen Dynasty, after ascending the throne, King Gia Long conducted the legalization of laws to create, on the one hand, the renewal of laws, on the other hand, to demonstrate the power of the new government. In 1811, the Hoang Viet laws were built and completed in 1812, and in 1818 were widely applied throughout the country. Hoang Viet's law is an approximate copy of the original Dai Thanh law without criticism or modification to suit Vietnamese conditions at that time. Hoang Viet rules were used during the Nguyen Dynasty and then continued in Trung Ky during the French occupation of Vietnam.

The death penalty provided in Hoang Viet luat le

Hoang Viet Luat with 353 articles, of which 122 stipulates the death penalty framework, with over 35% of the total number of laws on crime. In addition, the Code also stipulates a number of other acts in the indirect form that, when applied to specific offenses, the death penalty can also be used.

Under the Confucian influence, most of the offenses that could be executed were related to the safety and dignity of the king and the royal family, with regard to the relationship of the army, father, and wife. In addition, the usual offenses are executed, such as murder, robbery of property, recidivism, embezzlement, prostitution, robbery, graves digging.

The forms of capital punishment: The Hoang Viet rules stipulate that the death penalty has two steps: hanging and slashing. There are two types of hanging: hanging right away and waiting for the autumn to hang (hold the decision (hang now) and then hold the back (lock up and wait for the day to hang)). Slash is also divided into two categories, namely, decisive slaying (beheading immediately) and post-mortem (imprisonment waiting for the slash).

¹⁸‘Tinh nhân đạo của Bộ luật Hồng Đức với sự hoàn thiện Bộ luật Hình sự năm 2015’ (*Kiểm sát Online*, 22 March 2017) <https://kiemsat.vn/tinh-nhan-dao-cua-bo-luat-hong-duc-voi-su-hoan-thien-bo-luat-hinh-su-nam-2015-46745.html> (accessed 25 January 2021).

Hoang Viet's law does not stipulate the form of death by mausoleum, in accordance with the additional explanation of this Code: Die of the tomb is the most terrible of the horrible penalties today forever permanently abolish the corporal punishment, permanently abandon the clan (killing three families, including the father, mother and wife's family or also known as chu di trinity). Just keep the worst punishment out of all this by slashing the unfaithful and filial. However, some specific regulations on the crime still stipulate the sanction level is the execution of the mausoleum, such as the wife beat the disabled husband, immediately choked, killed, immediately beheaded, intentionally killed, executed mausoleum. It is also stipulated in Articles 223, 253, 254, 256, 257. This is a severe defect of Hoang Viet's law. In fact, the death penalty was carried out for Le Van Khoi when the rebellion against Minh Mang took place from 1833 to 1835.

In addition, in Article 223, Muu Dai reversed, officially recognized the institution "nine familial exterminations" (family execution).

In deciding the death penalty, Hoang Viet rules also used the rule of "Eight Deliberations". For those who commit offenses up to the death penalty line, if they belong to the "Eight Deliberations" category as well as the grandparents of those who belong to the "deliberation" category, they must first appeal to the king and wait for the ultimate decision. If they commit a crime under the "Crusaders", they can also be prosecuted but must be submitted to the king with a "sealed letter" (Article 4, Article 5).

Death penalty for corruption-related crimes: As stipulated in Book 17, The Penal Code includes 9 Articles to punish evil, violating human morality in the rule of the country, such as Article 312, bureaucrats receiving money with 80 charges of hanging (hanging and hanging). Do not abuse the law, eat bribes from many owners, collectively a half of them, with 120 or more hanging penalties (hanging for hanging). If the person does not receive the State salary, abuses the law (such as helping, allowing to work, tolerating) 120 amounts of hanging penalties (imprisonment pending hanging)¹⁹.

Case: In December 1854, foreign businessmen reported that many court officials of the court were greedy by foreign merchant boats in Quang Nam. Knowing the news, King Tu Duc immediately sent the governor to lead the court inspection team to Quang Nam to investigate. As a result, the accusations were true, the sentence was submitted; according to the Hoang Viet law, 17 people were sentenced to post-mortem imprisonment (forced death but still in temporary detention awaiting orders), 25 people were charged with exile, twelve people were charged with forced labor, eight were punished with a stick beat and dismissed. Many of the major players involved were severely punished.

According to historical documents, this is the largest bribery trial in our country during the feudal period.

¹⁹*Lược khảo Hoàng Việt Luật lệ* (Nhà xuất bản Văn hoá Thông tin, 2002) 120.

Provisions show the humane policy of death sentence in Hoang Viet luat le

For people and children, Article 21 stipulates: Those who are 80 years old or older or ten years old or younger or who are seriously ill and commit murder must be guilty of death, then proceed to the king and wait for the king's decision. If treason is committed, this law does not apply. No penalty is imposed for those aged 90 years or older or children seven years old and younger, even if they commit a death offense, not even the death penalty.

For women, Article 12 stipulates: For women committing crimes, except for adultery and death, they will be imprisoned, while other crimes are punished and then assigned to their husband to take care of. If a woman is committed to death row, she should be allowed to take care of the midwife; she also gives permission 100 days after giving birth to death.

For astronomers: Because during the Nguyen dynasty, it was vital to consider astronomy because they were considered to know well the movement of celestial bodies, meaning that they could know heaven and earth. Astronomical bureaucrats, if they commit crimes, are always reduced to the penalty rank. When they commit a crime worth the death penalty, they will not be punished but can only punish them with the highest penalty of “saving”, even when they commit treason (Article 18).

Thus, due to the influence of the ideology of the rule of the person in the Eastern criminal law, the Hoang Viet law set does not distinguish between criminal acts and those that violate ethics. The “Ten Abominations” still include “parricide”, “lack of filial piety”, “depravity”, “incest”, these acts are equated with “treason”, “rebellion”, “great irreverence” and “discord” must be executed if they violate. Besides, regulations on reduction and exemption of criminal liability for women and vulnerable people continue to be recognized

1.6. French colonial rule

The French invasion of Vietnam took place from 1858 to 1884. The war ended with the victory of the French colonial empire. The French invaded the entire territory of Dai Nam and established the ruling apparatus, starting the period. French colonial in Vietnamese history.

On 6/6/1884, the Patenôtre treaty was signed in Hue capital, dividing Dai Nam into three countries: Tonkin, Trung Ky, and Cochinchina under three different regimes. Each period has its own rule of law, such as three separate countries. Cochinchina was a French colonial land, Tonkin and Trung Ky were protected by the French, but the Nguyen court was still nominally controlled.

Accordingly, a series of acts considered “against the French government” is a “felony” and must be “executed”. Article 75, The figure of the reform law stipulates that: If the colonists of France or the protector of France, who hold weapons to act against the French, they will be executed. In addition, acts of murder, assassination, murder to commit other crimes, or to evade the law are also executed under this law.

Article 12, The Reformed Penal Code regulates the execution of the death penalty: The death penalty is executed by slashing; however, it does not stipulate what slashing is allowed. Notably, the An Nam and Hoang Viet criminal law do not provide for the form of execution.

However, based on the actual situation, the criminal law applied in our country at that time was just a copy of the French Penal Code, modified to suit the colonial situation, can quickly confirm the death penalty form in our country during this period was done by guillotine

2. Capital sentence in Vietnam's feudal criminal law's characteristics

The death penalty institution in Vietnam's feudal criminal law has gradually formed and developed and bears the imprint of historical ups and downs. The culmination of that development was the Ministry of the Imperial Court of Criminal Law. It can be said that the Law of the National Court of Criminal Law in the Le dynasty and the Hoang Viet law still circulated until today are the ones representing criminal law. feudal Vietnam period²⁰.

Study provisions on the death penalty in feudal Vietnamese criminal law from 938 to 1945, through different feudal dynasties, feudal criminal law provisions on the death penalty are an objective requirement to punish criminals, protect, reinforce the safety of the king and the royal family, the dignity of the royal lineage, demonstrates the absolute power of the king, national security, maintaining the rule of the feudal state apparatus.

The death penalty institution in feudal Vietnamese criminal law bears the mark of historical periods, depending on the conception of the ruling class about the social order that should be protected by criminal law, criminal legislative methods as well as legislative qualifications of each period. Therefore, when considering the institution of the death penalty, it is impossible to separate the concrete historical situation and recognize the dialectical movement of this institution in the process of the social movement. The historical mark of this period is reflected in the influence of Confucian thought, the concept of the social order of feudalism.

The process of formation and development of the death penalty institution in feudal Vietnamese criminal law is a development process with selective inheritance, which is the recognition of the correspondence between the nature and the level of danger for the society of crime is carried out with the degree of criminal liability that the offender must bear.

The crimes of applying the death penalty in the Vietnamese feudal law are deeply influenced by the Chinese feudal laws, which were supplemented and completed to suit the economic and social circumstances, the customs and practices in each period with a harsh nature were applied to many crimes, in which the provisions on "Crimes" inherited through the feudal dynasties, irrespective of a crime or a violation of common morality.

The execution of death was stipulated in the Vietnamese feudal criminal law with popular forms such as hanging, slashing, mausoleum. The death penalty is specified in the final definite form of punishment, corresponding to each criminal case.

²⁰Trần Thị Quang Vinh, 'Các tình tiết giảm nhẹ trách nhiệm hình sự trong pháp luật phong kiến Việt Nam' (2002)5 Tạp chí Luật học số.

The death penalty regime in the Vietnamese feudal criminal law is harsh but also demonstrates the humanity, when not applying, executing the death penalty for the vulnerable in a society like the elderly, pregnant women, children, ethnic people, or people with knowledge are valued in society. The circumstances of reducing criminal responsibility in feudal criminal law are shown in the provisions on reducing crime for people who belong to the eighth and for people with positions in society and family.

Regarding the death penalty for corruption in feudal law in Vietnam, all of the dynasties' ideologies and views are quite clear. It is always upholding measures to prevent corruption, considering prevention as one of the critical measures of decisive significance in the construction and maintenance of a clean feudal state apparatus, an essential public-official system of integrity, no room for visitors, umbrellas. The spirit and ideology of administrative reform set up a fair and reasonable salary regime for bureaucrats, set up real and effective supervisory agencies, and promoted corruption denunciation institutions. These are issues that need to be studied to perfect the anti-corruption law in the current period.

Stemming from the socio-economic development and international integration process, at the same time with the requirement of improving judiciary, building and perfecting the current socialist rule of law State in Vietnam, asked to apply progressive ideas and viewpoints in Vietnam's feudal criminal law in general, and regulations on the death penalty, in particular, to continue perfecting Vietnam's criminal law with the guarantee of human rights. and humanize criminal sanctions, in accordance with the development and ethical conditions of Vietnamese people.

References

Đại Việt sử ký toàn thư (NXB Khoa học xã hội, 1998).

Đại Việt sử ký toàn thư - Tập II (NXB Khoa học xã hội, 1998).

Đại Việt sử ký toàn thư (NXB Khoa học Xã hội, 1993).

Đại Việt Sử Ký Toàn Thư (NXB Hồng Đức, 2020).

Nguyễn Quyết Thắng, *Lược khảo Hoàng Việt Luật lệ* (Nhà xuất bản Văn hoá Thông tin, 2002).

Nguyễn Văn Thành, Vũ Trinh, Trần Hựu, *Hoàng Việt luật lệ - tập I* (Nxb. Văn hóa - thông tin).

Lịch sử Việt Nam giản yếu (Nhà xuất bản Chính trị Quốc gia, 2000).

Lược khảo Hoàng Việt Luật lệ (Nhà xuất bản Văn hoá Thông tin, 2002).

Việt Nam lược sử (NXB Văn Học, 2015).

Trương Hữu Quỳnh, Đinh Xuân Lâm, Lê Mậu Hãn, *Đại cương lịch sử Việt Nam* (NXB Giáo dục, 2008).

Viện Lịch sử, *Quốc Triều hình luật* (NXB Tư pháp, 2013).

Viện sử học, *Lịch sử Việt Nam –tập 3*(Nhà xuất bản Khoa học xã hội, 2007).

Lê Cẩm, ‘Luật hình sự Việt Nam trước thế kỉ XV’ 5 Tạp chí dân chủ và pháp luật.

Phạm Văn Beo, *Về hình phạt tử hình trong Luật hình sự Việt Nam*(NXB Chính trị Quốc gia, 2010).

Trần Thị Quang Vinh, ‘Các tình tiết giảm nhẹ trách nhiệm hình sự trong pháp luật phong kiến Việt Nam’ (2002) 5 Tạp chí Luật học số.

Phạm Thị Huệ, ‘Phòng chống tham nhũng trong pháp luật phong kiến Việt Nam’ (*Thanh Tra Chính phủ*) <<http://truongcanbothanhtra.gov.vn/nghien-cuu-khoa-hoc/nghien-cuu-trao-doi/1968-phong-chong-tham-nhung-trong-phap-luat-phong-kien-viet-nam.html>>

<<http://thoibaotaichinhvietnam.vn/pages/xuan-binh-than-2016/2016-02-04/ngay-xuan-doc-lai-bai-ca-dao-di-cho-tinh-tien->>

Tính nhân đạo của Bộ luật Hồng Đức với sự hoàn thiện Bộ luật Hình sự năm 2015’ (*Kiểm sát Online*, 22 March 2017) <https://kiemsat.vn/tinh-nhan-dao-cua-bo-luat-hong-duc-voi-su-hoan-thien-bo-luat-hinh-su-nam-2015-46745.html>