

## **IDEOLOGY OF HUMAN RIGHTS IN LE DYNASTY PENAL CODE**

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In the history of Vietnamese feudal state, early Lê dynasty (15<sup>th</sup> – 18<sup>th</sup> century) is considered one of the most brilliant period of development, particularly Emperor Lê Thánh Tông's reign (1460-1497) - a king of wisdom and excellence with two era names which were Quang Thuận (1460-1469) and Hồng Đức (1470-1497). King Lê Thánh Tông has left a bold imprint on the achievements in building and strengthening State centralization; developing economy, producing agricultures; defending nation; appointing talents to important positions etc. He had inherited, developed and perfected the ruling method which was a combination of ethics, disciplines and law. By drafting and promulgating Dynasty penal code (also known under the name of Hồng Đức legal code), Emperor Lê Thánh Tông had achieved the highest legislative level in Vietnamese feudal period.

Dynasty penal code contains many advanced contents, especially provisions

containing ideology of human rights which were very modern compared with current at that time.

In 15<sup>th</sup> century, the concept of human rights had not appeared in Vietnamese social life. Dynasty penal code did not mention the word human rights but contained many provisions regarding to protection of human rights such as right to own property, right to civil transaction, right to education and exam, right to receive medical care from the State and society when being sick, helpless, old and weak, right to protection, especially rights of vulnerable groups in society such as women, children, disabled people, the elderly, the sick, the poor etc. Those rights are what countries' constitutions including Việt Nam nowadays call basic human rights in civil, economic, social, cultural areas and rights of social vulnerable group.

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The ideology of human rights in Dynasty penal code shows Emperor Lê Thánh Tông's philosophy of action towards protecting people, at the same time shows his ahead legislative visionary and mindset in respecting and promoting rule of law.

### *1. Regarding to right to own property*

Dynasty penal code clearly distinguishes and recognizes two forms of land ownership: public ownership and private ownership. If public ownership is violated, the penalty is more severe. The protection of publicly owned land is respected but it doesn't mean protection of private ownership right is overlooked or denied. This is an outstanding innovation in terms of awareness and legal policies of Dynasty penal code.

In Estate chapter, there are 39 out of 59 provisions (accounting for 66.1%) regulating protection of land ownership (Article 344, 354-362, 370-400). There are 12 out of 59 provisions regulating protection of public land (accounting for 20.3%).

In 39 provisions of private land protection, there are 6 provisions regarding to penalties on authorities and officials who rely on their power to appropriate public land or land of pagans. It's in Article 300: Ministers and generals who arbitrarily take money from people to give the Emperor as gifts; Article 302: Subordinates of prince or princess shall not force people to become servants; Article 304: Officials govern unruly people; Article 355:

Harass and persecute others to buy fields; Article 370: Appropriate land of pagans; Article 372: Officials who misuse their authority to appropriate public land, raise serfs past due. In which, Article 300, 302, 304 are not in Estate chapter. In Chapter on Penalties for official misconducts, there is article limiting land ownership of officials (Article 226). According to this article, any official who appropriate land bigger than regulated area will be guilty, hit by 50 whips, demoted by one level; people who appropriate land elsewhere while having garden and pond already will increase the severity of the crime. These provisions are rarely seen in other feudal law such as Hồ Quý Ly Dynasty or Trần Dynasty.

Trần Dynasty's estate policy is the policy of depriving land from farmers. It was the root cause leading to the downfall of a dynasty which had many glorious victories against the enemies and save the country. How officials misused their rights to appropriate public and private land was one of the reasons why people did not feel assured. Learning the past history, Dynasty penal code focused on protecting private land and severely punish officials who used their power to appropriate public and private land. For those who did not have private land, they were still granted land in the village under military land permit.

Under Dynasty penal court, farmers were no longer serfs or slaves. They were owners or alternating users in the period of three or six years of public

land to cultivate and obtain agricultural products. That was their families' source of subsistence and daily food for house construction, wedding, child's education, anniversaries and holidays, funerals and all other costs.

*2. Regarding to the protection of ownership right and equal rights in property for women*

Dynasty penal code considered properties after marriage to be marital properties which were formed from various sources, including (Article 374, 375):

- Properties acquired by gift, legacy owned by husband;
- Properties given by husband's parents to both husband and wife;
- Properties acquired by gift, legacy owned by wife;
- Properties earned by both husband and wife.

During the marriage, the wife adds her own properties into shared properties. Husband and wife are equal in using and deciding shared properties. Will leaving properties to heirs shall have consent of both husband and wife with fingerprints, signatures of both in the presence and supervision of official.

In case of divorce, personal properties shall be returned to the owner. The shared properties shall be equally split.

Although being limited by the ideology of the contemporary feudal society, the inheritance division under the provisions of Dynasty penal code was conducted according to principles of advance laws

which many countries are still applying nowadays. The principles are:

- Equality on jointly earned properties: Husband and wife get equal share. The living person can make it their personal property, the legacy is split by living spouse and children. When both die, the legacy belongs to their children;
- Ensure life for widows: In case of not having jointly earned properties or children, widows can still earn a share of husband's legacy or gifts given to both by husband's parents. This legacy has lifetime tenure, but after death or remarriage, it shall be returned to husband's parents if alive or returned to children;
- Ensure life for children, especially young children when wife gets remarried;
- Ensure continuity of family and clan: Member of the clan is entitled to heir in case both husband and wife die and do not have children, grandchildren or parents to inherit.

These principles in Dynasty penal code still remain valid and are applied in current Civil Code of Việt Nam.

The advancement in legal perspective and awareness of Dynasty penal code in inheritance is reflected even more clearly when comparing with provisions relating to status of women in other feudal laws. In traditional feudal system, women have virtually no right on property, even right to inherit. When leaving husband's house for any reason, wife will be empty-handed.

For an agricultural country like Việt Nam, land ownership is very important. Therefore, how Dynasty penal code recognizes and protect land ownership of people, children, elderly, women as well as provisions on inheritance rights for women is highly appreciated by researchers at home and abroad.

Lê Thánh Tông's ideology of respecting and ensuring implementation of private ownership in Dynasty penal code, especially private land ownership of vulnerable people including women, is acquired and reappeared in modern laws in Việt Nam such as Land Law, Law of Marriage and the Family etc.

### *3. Ideology of expanding and respecting civil transaction rights*

From feudalism to feudal colonialism, or when under revolutionary government before renovation policy, Việt Nam's economy was outdated agricultural economy with self-demand and self-supply. Commodity exchange and civil transaction were greatly limited by legal awareness and conservative legal policy. In terms of consciousness, it was ideology of respecting scholars and despising traders. Trader was considered a dishonest job. In terms of policy, it was xenophobic and isolation policy, local officials arbitrarily prohibited markets with countless rules prohibiting people from consuming and producing irrationally.

However, during Emperor Lê Thánh Tông's reign, there were many rules in Dynasty penal code paved the way for

civil relations, trade controls as provided in Articles: 186, 187, 190, 595, 593, 613, 614, 615, and 616 as following:

- To allow markets in all villages and ensure security and safety for trading activities in the markets.

- To encourage the use of dong currency in buying, selling, awarding, giving, borrowing, pledging, paying tax and atoning. State is the monopoly in coinage.

- To unify instruments for weighing, measuring, counting including calculation of time.

- To strictly sanction acts of producing and selling counterfeit, poor quality goods and smuggling.

- To prescribe lending interest rate; to ensure repayment; to protect human dignity for debtors.

- Contractual relations in civil transactions are made in the forms and procedures prescribed by the State. For example, will making, borrowing, pledging, divorce agreement must be made in writing as prescribed by Dynasty penal code and in the forms recorded in *Quốc triều Hồng Đức niên giám chư cung thể thức*.

It can be said that the regulation and expansion of civil relationships was one of the causes and motivation for the society to become an open, dynamic and comprehensively developed feudal society during Emperor Lê Thánh Tông's reign. Unlike other Vietnamese feudal laws and laws of neighboring countries in the same era, there is an

obvious basic difference. The highlight of Dynasty penal code is the promotion of civil regulations whereas other laws mainly regulate punishments and penalties. This represents Emperor Lê Thánh Tông's profound humanity in legislative ideology and creates the distinction of Dynasty penal code.

#### *4. Ideology of education and exam right*

Dynasty penal code does not have any prohibition or restriction on education. Men and women are entitled to go to school. The State does not make any distinction between private and public schools. Whoever has ability can invite teachers to teach their children. In examination, there is no distinction between candidates from public and private schools, there is no mandatory age requirement of the candidate. Law does not have any distinction on birth and ethnicity; there is no criterion for priority in admission to study at Quốc Tử Giám or additional point to pass the exams. Whoever passes the tests (math and dictation tests) can enter local exam. Whoever passes local exam can enter Metropolitan exam. Whoever passes metropolitan exam can enter court exam.

Examination regulations are clear and transparent: examiner who has relation with examinee needs to decline judging (i.e. avoid) (Article 98). Examinee who brings a book or hires someone to do the test for them shall be punished according to law (Article 99).

According to Emperor Lê Thánh Tông's order promulgated in summer April, 3<sup>rd</sup>

year of Quang Thuận (1462): "for those of filial impiety, discord, disloyalty, incest, untruthfulness, despite academic or literature excellence, shall not be allowed to enter exam. Actors, singers, rebels, officials with bad reputation themselves and their children are not allowed to enter exam" (Complete Annals of Đại Việt, 2004, p.251). This is to restrict and prevent bad people from becoming officials.

When implementing provisions of Dynasty penal code in practice, they created a learning society. Equality and fairness in education and examination was done by law. That was the premise for the increase of knowledge and training talents which no preceding or succeeding emperor was able to do as Lê Thánh Tông.

#### *5. Humanity ideology or rights for sick people, orphan, widow, disabled people, helpless elders to receive care from the State*

There are two articles in Dynasty penal code which surprise and impress today sociologists and jurists. They are:

Article 294: In the capital, wards, lanes or villages, if someone is sick without anyone raising and located in roads, bridges or temples, the local official has to set up tent to take care, give them food and medications to save their lives by any mean and do not leave them unattended. If they die unfortunately, shall submit to the agency and bury them according to the condition, shall not expose the body; if this order is not

followed, the local officials shall be dismissed. When sick people come to temple or pagoda, abbot shall notify officials and not arbitrarily raise and keep them, otherwise shall be punished.

Article 295: For widowers, widows, orphans, disabled and poor people who have no relatives and cannot feed themselves, local officials shall adopt them. If abandon them, shall be punished with 50 whips, demoted by one level. If officials appropriate their given food and clothes, they shall be punished as custodians who steal public properties.

Compassion has been mentioned by many religions, saints and sages all over the world long time ago. However, that is only advice. Until the late 18<sup>th</sup> century and early 19<sup>th</sup> century, when movements for human rights of working people against the harshness, emotionless of feudalism were spread, the humanitarian legislation was then recorded sparingly in some Western countries' law (now known as International humanitarian law). However, in Việt Nam, in the middle of 15<sup>th</sup> century, issues of humanitarian law was already codified into provisions under Dynasty penal code. This task was prescribed by Dynasty penal code to be official's authorities and they shall be.

Emperor Lê Thánh Tông's ideology of humanitarian, respect and guarantee the right to enjoy social security for vulnerable groups in Dynasty penal code still remain valid nowadays and selectively acquired by Vietnamese

lawmakers and re-expressed in the provisions of current laws such as: Law on people's health care, Social insurance law, Elder law, Disability law etc.

#### 6. *Ideology of right to be protected by justice*

Dynasty penal code devotes a whole chapter with 65 articles (Đoán ngục chapter) to protect justice in the trial. The basic contents of these 65 articles all against unfair and wrong doings, against people who have affair, who receive bribes to turn facts upside down in trial and prison and to ensure quick trial.

The feudal laws earlier or on the same era as Dynasty penal code have similar provisions. But in reality, justice was a far-fetched thing for people. Many adversities still occurred. One of the reasons was the application of only litigation proceedings by jail officers and judicial clerks. With these methods, defendant did not have any right to defend or ask for defense counsel. They have no litigation right to refute charges against them. People were only allowed to beg, they did not have the right to fight for justice.

However, in Dynasty penal code, there are provisions to prevent monopoly in justice of jail officers and judicial clerks such as: Tight to confront (Article 677, 687); People who claim to be innocent have the right to confront when being questioned (Article 687); Right to decline judgment of jail officers, judicial clerks and jail officers and judicial clerks cannot attend interrogation or trial

(Article 689); Do not overlook the testimony of litigants, criminals (Article 716); People who relate or hold grudge against both parties in lawsuit shall not be permitted to testify (Article 714); During impeachment, there should be complete key documents (Article 683).

Under Dynasty penal code, defendant still has no right to defend himself. The abovementioned provisions actually have very little content regarding to regulatory litigation proceedings. However, those are valuable clues and early first steps in the history of struggle for justice nowadays.

In conclusion, even though the concept of human rights was not officially used in Dynasty penal code, the legislative ideology of protecting values of human rights was recorded quite fully and expressed in the provisions. Emperor Lê Thánh Tông's concept of human rights was expressed fully in the provisions of Dynasty penal code and moreover, it also showed the respect for human, putting people at the center, respecting and promoting noble humanitarian values □

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