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New points in human rights regulations in the 2013 Vietnamese constitution

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Abstract

All persons, regardless of their gender, race, nationality, ethnicity, language, religion, or any other status, are entitled to certain fundamental rights known as human rights. Human rights can also be viewed as the culmination of human civilization, a shared accomplishment of all people. Preserving the rights of children is a crucial objective that causes nations all over the world significant concern. Human rights organizations were acknowledged in Vietnam's 1946 Constitution and kept growing up until the 2013 Constitution. The analysis and discovery of fresh information regarding human rights institutions is the main goal of this essay. Individuals in the 2013 Constitution in contrast to earlier ones.

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1. Introduction

Human rights are one of the basic elements and the foundation of a democratic and civilized society. During the development of human history, the idea of human rights was formed very early, so it can be understood that human rights are a historical category, the result of humanity's struggle to build human rights. A fair, democratic society.

As protecting human rights is regarded as the primary objective of the majority of nations, it is a shared value among all people. Since attaining independence in 1945 and hearing President Ho Chi Minh read the country's declaration of independence, the Party and state in Vietnam have always placed a high priority on upholding human rights. Regarding human rights, the Ba Dinh Square agreement of September 2, 1945, is regarded as a significant document. Drawing on the Democratic Republic of Vietnam's Declaration of Independence, human rights regulations were first formulated in the 1946 constitution and subsequently expanded upon in the 1959, 1980, 1992, and 2013 constitutions, which included numerous new provisions pertaining to human rights institutions.

2. Human rights in previous Constitutions

Human rights have always occupied a special place in Vietnam's legal system since the Constitution, which is the official document with the highest legal authority in the country, was written. Vietnam Socialist Republic. Reaffirming the significance of upholding and defending the people's freedom, democracy, and human rights.

2.1. Constitution of 1946

On November 9, 1946, at the second session of the First National Assembly, the first Constitution of the Democratic Republic of Vietnam was adopted. The 1946 Constitution includes a Preamble, 7 chapters and 70 articles. In particular, the regulatory content on human rights is stipulated in "Chapter 2: OBLIGATIONS AND RIGHTS OF CITIZENS" including 18 articles, expressing progressive ideas and outstanding values that affirm human rights the freedom and democracy of the Vietnamese people during the years of resistance against the French, specifically as follows:

Firstly, the provisions on human rights in the 1946 Constitution are placed in chapter 2 after chapter 1 regulating the polity of the Democratic Republic of Vietnam. This shows that human rights and civil rights of the Vietnamese people have an extremely important position, second only to the country's institutional form. For the first time after thousands of years of feudalism and after more than 80 years of French colonial domination, the legitimate rights and interests of an oppressed and exploited people are recognized in the highest legal document of a country. Family. It further affirms the nature of our state as a state of the people, by the people and for the people. Our State has promoted and attached great importance to recognizing the legitimate rights and interests of the people.

Second, the 1946 Constitution stipulates that all people in Vietnam are equal. "All people are born with equal rights. The Creator gives those rights that no one can violate; among those rights, there are the right to life, the right to freedom and the right to pursue happiness ^[1]. "All Vietnamese citizens have equal rights in all aspects: economically, politically, culturally and before the law. The Constitution also stipulates that "women have equal rights with men in all aspects", this demonstrates the progressive ideology in the Constitution, eliminating the ideology of "respecting men over women" in feudal times, affirming the meaning and contribution of women in the fight, construction and defense of the homeland as well as building prosperous and happy families.

A new feature of the 1946 Constitution is that it initially recognized a number of important freedoms of the people such as freedom of speech, freedom to publish, freedom to organize and assemble,... focusing on the interests of the people of disadvantaged groups in society such as "Elderly or disabled citizens who cannot work will be helped. Children are cared for in terms of education.", "national minorities have the right to learn in their own language", "Poor students are helped by the Government" ^[2]... On the one hand, these regulations have created the foundation for equality of legitimate interests of all segments of the population in society, on the one hand demonstrating the principle of national solidarity in Vietnamese society, and on the other hand demonstrating the moral and humane values of the people. Vietnamese ethnicity.

The provisions of chapter 2 clearly affirm the nature of our state as a State of the people, by the people and for the people, all citizens are equal in terms of human rights, freedom and democracy that are constitutionally recognized but at the same time. At the same time, we also have the obligation to protect the Fatherland, protect the Constitution and the law.

2.2. 1959 Constitution

At the 11th session of the First National Assembly, the revised Constitution was unanimously approved and on January 1, 1960, President Ho Chi Minh signed a decree announcing the Constitution. With 10 chapters and 112 articles, the 1959 Constitution promoted the spirit of the 1946 Constitution. Affirming that Vietnam is an indivisible North-South unity, organized under the democratic republican state, all All power belongs to the people, democratic freedoms are guaranteed. Human rights in the 1959 Constitution are recognized in chapter 3, after two chapters "Democratic Republic of Vietnam" and "Economic and social regime". Although there is a change in the position and order of

regulations compared to the 1946 Constitution, the content of regulations on human rights is still promoted and respected by our State.

In this Constitution, all citizens are equal before the law; have the right to freedom of speech, press, assembly, association and demonstration; Citizens' homes are not violated, correspondence is kept secret... At the same time, the 1959 Constitution also added many new rights for the people such as: the right to protest; right to complain and denounce; right to work; the right to rest; the right to receive material assistance when old and sick; freedom of scientific research, etc. These regulations both inherit the provisions on human rights of the 1946 Constitution and supplement progressive ideas in the world, while also demonstrating the equality of all people in life. Society, creating a foundation for sustainable development and strengthening the great national unity bloc.

The 1959 Constitution expanded regulations on salary benefits, maternity leave, etc. This shows that our State has focused on protecting women's rights more than the 1946 Constitution. In addition to provisions on gender equality, the 1959 Constitution has shown progressive ideas in protecting human health. Women's health in the period before and after childbirth. At the same time, the addition of regulations on protecting the rights of mothers, children and maternity homes, daycare centers and nurseries clearly confirms that our State is beginning to focus on child protection, is the country's kindergarten, a source of labor to help the country develop. The 1959 Constitution included the protection of marriage and family in the Constitution. On the one hand, affirming that the family is a cell of society that needs to be protected, on the other hand, protecting the marriage and family system is to protect the rights of women and children. Along with regulating human rights, freedom, and democracy for the people, the 1959 Constitution also stipulates the people's obligations to the country such as the obligation to obey the Constitution, laws, and discipline. Labor, public order and social living rules; obligation to respect and protect public property; tax payment obligation; duty to defend the Fatherland. Promote common values of social community along with personal values.

2.3. 1980 Constitution

At its first session from June 25, 1976 to July 3, 1976, the National Assembly passed important resolutions, including the resolution on amending the 1959 Constitution and establishing the Proposal Committee. Drafting the Constitution includes 36 members, chaired by Chairman of the National Assembly Standing Committee Truong Chinh. After more than a year of urgent preparation, the Draft Constitution was consulted and discussed among officials and people. On December 18, 1980, at the 7th session of the 6th National Assembly, the new Constitution was officially adopted.

The 1980 Constitution had clear changes compared to previous Constitutions in provisions on human rights. Relevant content on the rights and obligations of citizens is specified in Chapter 5 titled "Basic rights and obligations of citizens" including 29 articles. Overall, the provisions on human rights in the 1980 Constitution are still inherited and are more specific, clear and strict in the provisions than the two previous Constitutions.

¹Declaration of Independence of the Democratic Republic of Vietnam

²Articles 14 and 15, Chapter 2, 1946 Constitution

The 1980 Constitution continues to stipulate many more human rights for the people such as: the right to have Vietnamese nationality; right to social insurance; the right to "study without paying";... and inherit rights such as: the right to participate in managing the affairs of the State and society; right to work; The right to ensure confidentiality of telephone calls, letters, telegrams, etc. Shows that the 1980 Constitution has closely selected and supplemented progressive regulations and ideas on human rights. Ensure fairness, equality, social welfare regimes, working regimes, and social security for people.

Besides the new points, the 1980 Constitution still clearly stipulates that people's enjoyment of human rights must go hand in hand with fulfilling their obligations to the country. It even clearly stipulates: "The rights of citizens are inseparable from the duties of citizens."^[3] This can be seen as a condition for people to enjoy human rights protected by the State and must fulfill their obligations to the country.

2.4. 1992 Constitution

Born during the period of the country's innovation and opening up to international integration. The 1992 Constitution was created to replace the 1980 Constitution, which was no longer consistent with the guidelines and policies for national development of the Communist Party of Vietnam. The 1992 Constitution was born to reflect the urgent needs of history, to bring the country out of crisis, open integration, economic stability and development. Besides, this Constitution also reflects new development ideas in human rights institutions. The contents of "Rights and obligations of citizens" are still recorded in Chapter 5 including 34 articles, specifically some of the following contents:

For the first time in the constitutional and legislative history of our country, "human rights" were included in the Constitution. In Article 50, the 1992 Constitution recognizes "human rights" as follows: "In the Socialist Republic of Vietnam, political, civil, economic, cultural and social human rights are respected important, expressed in citizen rights and stipulated in the Constitution and laws. This regulation has created a solid legal corridor for the protection of human rights for the Vietnamese people. As well as concretizing human rights regulations in other legal documents.

Human rights and citizen rights in the 1992 Constitution continue to expand a number of articles such as: the right to freedom of business according to the provisions of law; the right of individuals to be presumed innocent. Besides, this Constitution also reaches a number of specific subjects in society such as: youth, war invalids, sick soldiers, families of martyrs,... Showing respect and promoting the role of youth in national development while still constantly caring for those who fought for the independence and freedom of the Fatherland.

The 1992 Constitution continues to stipulate that rights must go hand in hand with citizens' obligations. Adding additional prohibitions that people are not allowed to do such as: "Illegal production, transportation, trading, storage and use of opium and other narcotics is strictly prohibited. The State stipulates a regime of compulsory detoxification and treatment of dangerous social diseases"; "All acts of discrimination against women and insults to women's dignity are strictly

prohibited."... Regulations on gender equality, working regimes, welfare regimes, and social security continue recognized and concretized into strict regulations.

3. Human rights in the 2013 Constitution

In recent years, the State of Vietnam has affirmed its role as the main subject - the People are the root in the work of innovation, building and protecting the Fatherland. "There is nothing more precious in the sky than the people. In the world, nothing is stronger than the united force of the people"^[4] is the affirmation of President Ho Chi Minh, it can be seen that our Vietnamese State's viewpoints and policies aim for the goal of a wealthy people, a strong, equitable, democratic, and civilized country to ensure political needs. Dignity, rights and interests of the people. Therefore, the people are the important and leading subjects in the innovation and development strategy that brings the country to socialism.

Through the Constitutions, legislators also absorbed and recognized the importance of the subject, the people, and adjusted the Constitution's content to suit the actual development situation of society. The 2013 Constitution is the result of absorbing, inheriting and promoting the provisions of the 1946, 1959, 1980 and 1992 Constitutions, drafted and discussed to get people's opinions in different regions. Levels from the Central to local levels participated in amending the Constitution. After nearly 2 years, the draft Constitution was approved by the XIII National Assembly of the Socialist Republic of Vietnam, 6th session, on November 28, 2013, effective from January 1, 2014. The Constitution is considered the property of the nation and the intelligence of the people. Marking a strong development step in changing the theoretical thinking of our Party and State on basic principles in the era of social and national development innovation. In particular, a special point is to recognize regulations on human rights, rights and obligations of citizens as the basic and most important principles in respecting, protecting and ensuring the implementation of human rights and being expressed through some typical new points:

First, regarding Position, the 2013 Constitution is condensed to include 11 chapters and 120 Articles. In general, there are not many basic changes, however, a major change compared to the 1992 Constitution is the provisions on human rights and civil rights because they make the Charter consistent with the content of the Articles international human rights treaty to which Vietnam is a member. Human rights, rights and obligations of citizens is the Chapter with the most articles of law (including 36 articles out of a total of 120 Articles, from Article 14 to Article 49) and is considered the brightest point when overcoming the limitations of the Law. The previous Constitutions, when stipulated, moved to the second position, after Chapter I on "Political regime" compared to the 1992 Constitution, which stipulated in the position of Chapter V. This is not a position arrangement. Random coincidence that shows the Vietnamese State's outstanding view on the importance of human rights in the Constitution. The content of human rights and civil rights is not only regulated in Chapter II but is the basis for creating consistency, seriousness and continuity throughout the entire Charter.

Second, regarding the Chapter name, in addition to changing the Chapter position, the chapter name was also edited compared to the 1992 Constitution, which stipulates

³Article 54, 1980 Constitution

⁴Calls of President Ho (1956), Publishing House. Truth, Hanoi, 1958, vol. IV, p. 25-29

"Basic rights and obligations of citizens", while the 2013 Constitution is more formal regulations on "Human rights, basic rights and obligations of citizens". Thereby, affirming the supreme right belongs to the people - Subjects living in the territory of the Democratic Republic of Vietnam, according to the International Convention that Vietnam has signed.

Third, regarding the Subject, the Constitution's framers legally defined, recognized and separated the two concepts "Human" and "Citizen". Human is a general term that refers to humanity in its natural aspect, an individual relationship with the human community. Meanwhile, people are linked to the state through nationality that is, linked to the basis of legal status for a person to become a citizen - an officially recognized subject enjoying rights and obligations. Citizens in a state, guaranteed by the State to its citizens that humans do not necessarily have. Citizen rights and human rights are two categories that are very close to each other but are not identical. Citizen rights have a narrower meaning than human rights, and at the same time, expand the subject of rights to "everyone" no one", "organization, individual", "Vietnamese people abroad", "foreigners residing in Vietnam". That is, human rights are applied to everyone, simply because they are human beings, not just citizens of the Democratic Republic of Vietnam to ensure the principle of protecting the rights and freedoms of all people subject. do not discriminate based on age, gender, religion, ethnicity, nationality or social status living in the territory of Vietnam, specifically according to the regulations in Clause 1, Article 16, 2013

Constitution: "Everyone is equal before the law."

Fourth, about the Responsibility of the State, as an inherent human right - Human rights, citizen rights. Accordingly, the 2013 Constitution stipulates the State's responsibilities to the people based on the principle: **Recognize, respect, protect and ensure**, while Article 50 of the 1992 Constitution only recognizes the obligation to respect. Therefore, the above four principles govern all content of the Constitution, the basis for protecting human rights and building all regulations of the Vietnamese legal system. Article 14 of the 2013 Constitution stipulates: "The State ensures and promotes the people's right to mastery; Recognize, respect, protect and ensure human rights and civil rights; perform Rich people, strong country, democracy, fairness, civilization, everyone has a prosperous life, freedom, happiness, and conditions for comprehensive development ^[5] and Article 3, 2013 Constitution stipulates: "In the Socialist Republic of Vietnam, human rights and civil rights in political, civil, economic, cultural and social aspects are recognized and respected respect, protect and ensure according to the Constitution and the law."

The principle that the State "recognizes" human rights and citizen rights It is understood that human rights and civil rights are natural and inherent rights but need to be recognized by law. This is considered a statement with political and legal significance, when the State of Vietnam participates in international conventions on human rights, thereby, awareness of human value is recognized by states around the world. Protection on a global scale. Therefore, the State has institutionalized the international community's

recognition of human rights into human rights, civil rights and regulations in the Vietnamese Constitution and laws.

The principle that the State "respects and protects" human rights and citizens' rights. That is, Vietnam's legal guidelines and policies, when being formulated, must give importance and comprehensive attention to the implementation of human rights and civil rights and be protected by prohibitive measures and legal sanctions to avoid creating loopholes for public agencies or other entities that violate human rights and civil rights. This is an important and parallel principle, because when the state respects rights that the state is not responsible for protecting, it means the rights are neglected and do not exist. Among human rights, there are human rights that are protected and protected by the state, for example: (1) "The state protects marriage and family, protects the rights of mothers and children" ^[6]; (2) "Children are protected, cared for and educated by the State, family and society; be involved in children's issues. Harassment, torture, maltreatment, neglect, abuse, labor exploitation and other acts that violate children's rights are strictly prohibited ^[7].

The principle that the State "guarantees" human rights and citizens' rights is an important constitutional principle that contributes to systematization and codification in the implementation of specialized laws, for example in the private sector. law, the state's performance of its responsibility to ensure the implementation of human rights and civil rights is especially important, because they have the greatest risk of infringement and directly affect life, property, honor, and dignity. human dignity and reputation.

Practice shows that to recognize, respect, protect and ensure human rights and citizen rights, the State mobilizes and controls all resources for effective implementation. The principles are being implemented better, but in practice, violations still cannot be avoided, making it difficult to identify violations.

Fifth, regarding the limitation of rights, in addition to the human rights recognized in previous Constitutions, the 2013 Constitution for the first time introduces a new point on the limitation of rights when establishing the principle of all human rights. are limited in certain cases, specifically: *Human rights and civil rights can only be limited according to the provisions of law in necessary cases for reasons of national defense, national security, public order, order, social safety, social ethics, and community health.* ^[8] As the most powerful body of the people, the National Assembly - the highest state power body has the right to be limited by law. However, the content on human rights limitations is broad, abstract and relative. Besides, recognizing, respecting, protecting and ensuring maximum promotion, for example, freedom of speech, freedom is also placed within a certain framework and limits allowed by law.

To have an overview of the rights expressed in 36 Articles of Chapter II, we can divide human rights into 2 groups:

Political and civil rights: Right to life (Article 19); Inviolable rights to body, health, honor and dignity (Clause 1, Article 20); The right to donate human tissues and organs and donate bodies (Clause 2, Article 20); Inviolable rights to private life, personal secrets and family secrets (Article 21); Inviolable right to residence (Article 22); The right of citizens not to be deported or handed over to another country (Clause 2, Article

⁵ Article 3, 2013 Constitution

⁶ Clause 2, Article 36, 2013 Constitution

⁷ Clause 1, Article 37, 2013 Constitution

⁸ Clause 2, Article 14, 2013 Constitution

17); Right to complain and denounce (Article 30); Ownership and inheritance rights (Article 32); Right to freedom of business (Article 33)

Economic, social, and cultural rights: Right to have a legal residence (Article 22); Right to freedom of belief and religion (Article 24); Citizens have the right to social security (Article 34); Right to health care protection (Article 38); The right to research science and technology, create literature and art (Article 40); The right to enjoy and access cultural values, participate in cultural life, and use cultural facilities (Article 41); The right to determine ethnicity, use native language, and choose language of communication (Article 42); Right to live in a healthy environment (Article 43);.....

Let's delve into a few new points of the above regulations to clearly see the big changes compared to previous Constitutions that have not been mentioned, specifically:

(1) The right to life is a basic, inherent, and supreme human right. Up to now, the right to life has been stipulated in many international and national legal documents such as the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1948 Universal Declaration of Human Rights, and the 1948 Declaration of Human Rights. Declaration of American Independence 1776.... For example: In Article 6, the ICCPR stipulates: *"Everyone has the inherent right to life. This right must be protected by law. No one should be arbitrarily deprived of his life."* Corresponding to the above regulations, the ideology expressed in the Declaration of Independence of the Democratic Republic of Vietnam was read by President Ho Chi Minh in front of the entire people with the content of recognizing, inheriting and promoting ideology. ideas and arguments about human rights in the world, he affirmed that: "All people are born with equal rights. The Creator gave them rights that no one can violate; Among those rights, there are the right to life, the right to liberty and the right to pursue happiness. Consistent with the above assertion, in Article 19 of the 2013 Constitution, Vietnam stipulates: "Everyone has the right to life. Human life is protected by law. No one's life will be unlawfully taken away." So that people's right to life is not illegally deprived, the State has stipulated in the legal system such as Civil Law, Administrative Law, Labor Law, Marriage and Family Law, Criminal Law, and Procedural Law criminal. Are sharp legal tools to ensure the effective, fair, public, and transparent implementation of rights protection in the spirit of protecting natural human rights that the Constitution proposed by the 2013 law.

(2) The inviolable right to privacy, personal and family secrets, and the right to protect one's honor and reputation. Information about private life, personal secrets, and family secrets are protected by law. (Clause 1, Article 21). This right is widely recognized and recognized in international conventions on human rights. In 1982, Vietnam officially joined the international convention, which was a turning point to recognize and protect the right to privacy, personal and family secrets, and the 2013 Constitution is considered a premise for expressing institutionalize regulations in legal documents such as the Civil Code, Penal Code, Press Law, Children's Law, etc. Recently, the Cyber Information Security Law was

developed and passed by the National Assembly on the basis of compliance with the law. Protect and expand the scope of ensuring the inviolable right to private life of the 2013 Constitution in cyberspace.

Since the 2013 Constitution, the Right to Privacy has also begun to be included in the 2015 Civil Code stipulated in Article 38: Right to private life. In the current context of strongly developing digital technology, the total number of Facebook users in the world as of October 6, 2013 is 1.2 billion users. In Vietnam alone, by August 2013 there were 19.6 million Facebook users, accounting for 21.42% of the population and 71.4% of Internet users (According to Vietnam National Library statistics)^[9]. It can be affirmed that the growth rate of social networks in our country is very fast compared to the world.

The right to privacy is also defined in Article 12 of the 1948 Universal Declaration of Human Rights as follows: No one shall be subjected to arbitrary interference with his or her privacy, family, home or correspondence, nor such as insulting personal honor or reputation. Everyone has the right to the protection of the law against such interference and intrusion." This right is also recognized in the 1966 International Convention. It can be seen that the right to privacy was formed a long time ago.

In the era of industry 4.0, subjects and organizations can easily violate individuals' privacy rights very easily with electronic tools and devices such as phones, computers, etc. Because people regularly use internet services, use social networking sites such as Facebook, Zalo, Instagram, Tiktok, to contact, exchange and share personal and family information. It is an environment that spreads quickly and easily leaks information, revealing personal and family secrets, causing damage to the honor, spirit, dignity, materiality and even the lives of others. That person has not authorized its use. Besides, from the perspective of lawmakers, determining illegal acts and infringing on privacy is extremely difficult and is only relative.

4. Conclusion

The 2013 Constitution has almost complete access to human rights constitutions in the international human rights code, in accordance with general principles and in accordance with cultural, social, political and legal conditions, Vietnam history. At the same time, the 2013 constitution added many new points and amendments on human rights compared to previous constitutions. However, the 2013 Constitution has built a mechanism to protect the constitution. The Constitution is a document that recognizes, ensures, protects, and promotes human rights in Vietnam, so protecting the Constitution can also be understood as protecting human rights in Vietnam.

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