

CUSTOMARY LAW AND GENDER EQUALITY: A REVIEW OF STUDIES

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Abstract: Customary law is a traditional social institution that plays an important role in regulating social relations in many ethnic communities. Gender equality is one of the key objectives of sustainable development and the protection of human rights in the contemporary context. Against this backdrop, the relationship between customary law and gender equality has increasingly attracted scholars' attention across various disciplines. Using a literature review and document analysis approach, this article systematizes and evaluates prior studies on customary law, gender equality, and the relationship between customary law and the implementation of gender equality within communities. On this basis, the article identifies several issues that warrant further investigation from both theoretical and practical perspectives.

Keywords: Gender equality; Evaluation of previous studies; Systematization; Customary law.

1. Introduction

Formed and transmitted over many generations, customary law reflects the cultural value system, ethical norms, and distinctive social conceptions of a community, while also governing many areas of life such as marriage, family, inheritance, resource management, and community organization. In the current context, as gender equality increasingly becomes an important goal of sustainable development and the protection of human rights, examining the relationship between customary law and gender equality is significant both theoretically and practically. This article reviews studies related to customary law and gender equality, clarifies the main approaches, highlights notable research findings, and identifies several issues for future research.

2. Research overview

Customary law has long attracted scholarly attention as a traditional social institution that plays an important role in regulating social relations within communities. Internationally, many anthropologists and development scholars have also been interested in the relationship between customary law and gender relations in indigenous communities. These studies commonly approach customary law as a system

of social norms that profoundly affects the status, roles, and rights of women and men. In Vietnam, since the 1990s, numerous works have collected, systematized, and analyzed the customary laws of ethnic minority groups. These studies have mainly focused on clarifying the origins, content, structure, and social functions of customary law, while also pointing out its role in regulating marriage, family relations, inheritance, resource management, and community organization. In addition, some studies have explored the potential of applying the positive values of customary law to social governance and community development in the current context. In parallel, gender equality has also become an important research topic. Many studies have demonstrated that traditional cultural factors, customs and practices, and socio-economic conditions have significant impacts on gender relations and the realization of gender equality.

Although many studies have addressed either customary law or gender equality, and some have initially analyzed the effects of customary law on gender relations, comprehensive and systematic studies on the relationship between customary law and gender equality remain rather limited. To date, no study has systematically synthesized and analyzed research on customary law and gender

equality as an independent topic. Therefore, further synthesis and evaluation of existing studies are necessary to clarify the overall picture of this field and to suggest directions for subsequent research.

3. Research methods

This article employs a literature review to systematize and analyze studies on customary law, gender equality, and their relationship. The materials consulted include monographs, scholarly articles, research reports, and domestic and international academic works addressing these issues. Based on the collection and screening of the literature, the article classifies studies by their main approaches. At the same time, analytical, synthetic, comparative, and generalization methods are used to clarify the content, findings, and research trends of published works.

4. Research results

Studies on customary law

International studies approach customary law from a variety of angles. One common approach views customary law as an expression of legal pluralism in postcolonial societies. According to Tanjung (2023), in many indigenous communities, customary law often operates alongside the state legal system, emphasizing principles of restorative justice, reconciliation, and community participation, especially in areas where state presence remains limited. However, a deeper examination of the relationship between customary law and formal law also reveals tensions: certain customary provisions preserve gender-discriminatory practices or remain incompatible with human rights standards, thereby posing challenges to the integration of customary law into national legal systems.

Another line of research approaches customary law from the perspective of customary international law (CIL) as a source of law. Chimni (2018) analyses the formation of binding norms through state practice and opinion juris, while criticizing the tendency for CIL to reflect the interests of powerful states and to fail to ensure fair representation for developing countries. In post-conflict societies, studies by Isser (2011) and Tobin (2014) emphasize the role

of customary law in transitional justice as a mechanism that supports community reconciliation and social reconstruction, while also warning of the risk of reproducing gender inequality or conflicting with international human rights standards.

Some other studies focus on analyzing the relationship between customary law and human rights. Svensson (2003) and Tobin (2014) argue that customary law can both protect and restrict human rights, depending on its content and the manner of its implementation. While customary law helps protect the rights of local communities over land use, natural resources, and cultural heritage, many of its provisions still keep women in disadvantaged positions or restrict individual rights.

In addition, many works address the role of customary law in sustainable development. Through cases in Norway, Hawaii, and Greenland, Orebech (2005) shows that indigenous customary law can make positive contributions to resource protection and environmental management. Joireman (2014) proposes the systematization of customary law to increase stability and enhance its integration into formal legal systems. However, this view remains controversial, as many scholars argue that customary law is “living law” whose flexibility should be preserved. The comparative study by Febrianty et al. (2024) on Malaysia and Indonesia also illustrates the process of integrating customary law into national law in Southeast Asia, while emphasizing the need for a community-based participatory approach and respect for indigenous voices.

Overall, international studies show a shift from viewing customary law as a backward system to recognizing its role in global legal diversity. Nevertheless, integrating customary law into formal legal systems still requires careful consideration to ensure harmony between traditional cultural values and modern legal standards, especially in matters related to gender equality, human rights, and sustainable development.

In Vietnam, one of the foundational scholars of customary law is Ngo Duc Thinh. In his work

“Studying the customary laws of ethnic groups in Vietnam”, he argues that customary law is not merely a body of ancient rules but also an expression of indigenous knowledge, containing experience in conduct, conflict resolution, and the regulation of social relations within communities. Nguyen Van Tien (2019) emphasizes that customary law is not only an instrument for regulating behavior but also a repository of folk knowledge reflecting how communities respond to the natural and social environment. In his article on the characteristics of customary law, he describes its non-written, internalized, voluntary, and flexible nature as core features that account for its enduring vitality, especially in areas where formal law has only limited presence. In a study on E De’s customary law, Truong Thi Hien (2017) approaches customary law as a reconciliation-oriented system of justice. She points out that adjudicative procedures in E De customary law reflect a spirit of consensus, the sharing of responsibility at the community level, and the restoration of social relationships as the ultimate aim rather than mere punishment of the individual. Many other scholars, such as Phan Dang Nhat, Lam Ba Nam, and Pham Thi Xuan Nga, have gone further in analyzing specific contents of customary law, such as land ownership, marriage, property division, inheritance, and so forth, among particular ethnic groups such as the Cham, Raglai, E De, Mnong, and others.

A recurring emphasis in many studies is the role of customary law in protecting natural resources and managing communities. Truong Bi and Bui Minh Vu (2006) argue that in the Central Highlands, community rules governing the use of forests, water, and land—rules that are customary in nature—have helped maintain ecological balance and reduce internal conflicts. This is also affirmed by Do Van Duong (2022), who analyses how communities use customary law to control indiscriminate forest exploitation and to maintain rules governing access to shared resources.

However, alongside its values in social regulation, customary law has also been criticized because some of its provisions remain gender-

discriminatory and preserve traditional roles that are unfavorable to women. Nguyen Thi Viet Huong (2000) points out that many customary codes still exclude women from inheritance rights or from decision-making over property and therefore need to be adjusted when incorporated into the current legal system.

In general, current research on customary law in Vietnam is increasingly interdisciplinary, situating the issue within historical and cultural contexts while also linking it to social governance, sustainable development, and gender equality. Many scholars emphasize that rather than denying or confronting customary law, the state should assess and selectively incorporate its positive elements into community governance policies, thereby creating a plural legal system that still respects identity and human rights.

Studies on gender equality

Scholars have made important contributions to clarifying the nature of gender equality, the factors that affect it, and the consequences of gender inequality for women and society, and have also proposed policy directions to advance gender equality. From the perspective of socio-economic development, the article “Determinants of farmers’ choice of adaptation methods to climate change in the Nile Basin of Ethiopia” by Deressa, Hassan, Ringler, Alemu, and Yesuf (2009) emphasizes the role of women’s labor in selecting and applying climate change adaptation methods in the Nile Basin of Ethiopia, thereby showing that women’s participation is important to the adaptive capacity of the community. One aspect that has received broad attention in gender equality research is gender-based violence—a concept referring to violent acts arising from hierarchies of power associated with gender difference; women are the group most affected, although men and boys may also become victims.

Particularly noteworthy is the large-scale review conducted by Belingheri P., Chiarello F., Fronzetti Colladon A., and Rovelli P. (2021), which analyzed 15,465 international articles on gender equality published between 2000 and mid-2021 using quantitative methods combined with big data analysis. The results identified 27 principal research themes, among which

compensation, role, education, decision-making, and career progression were particularly prominent, while topics such as leadership and entrepreneurship have attracted increasing attention. However, the authors also point out that although many studies focus on identifying forms of inequality and the barriers faced by women, the number of studies proposing or testing solutions to address these issues remains relatively limited.

Over the past two decades, research on gender equality in ethnic minority areas of Vietnam has approached the issue from multiple dimensions, ranging from the division of labor within the family and access to assets to the impacts of labor migration, customary law, policy, and women's empowerment models. Findings from many studies show that gender inequality continues to exist in many forms, subtle yet persistent, within ethnic minority communities. Women often undertake both productive work and family care work simultaneously, yet they have limited decision-making power in important family and community matters. Nguyen Huu Minh's (2022) survey of nearly 3,000 households across multiple ethnic groups shows that women still carry out most domestic work and childcare, while ownership of assets remains mainly in the hands of men. Even in some matrilineal communities, land use right certificates are still more often issued in the husband's name, reflecting the strong influence of the notion of the "male representative" in family power structures.

These gender norms are not confined to the family sphere but also affect women's social status. Tran Minh Hang's (2022) study of the Ha Nhi community shows that although participation in labor migration gives women a greater voice in family decisions, the burdens of caring for children and parents and managing household expenditures still fall mainly on them. Men often retain a symbolic role of authority while participating less in everyday care work, creating a paradox in which women are economically "empowered" yet remain bound by traditional gender responsibilities.

Another issue raised in many studies is domestic violence. In ethnic minority

communities, this phenomenon is often concealed or treated as a "private family matter." According to Nguyen Huu Minh (2022), the low reporting rate does not indicate a low level of violence; rather, it mainly stems from the combination of patriarchal structures, the lack of support services, and the psychology of "saving face" in closed communities.

Gender inequality is also manifested in education and social participation. Dang Thi Hoa's (2001) study of H'Mong women in Hoa Binh points out that low educational attainment, early marriage, and traditional behavioral norms leave women with few opportunities to participate in activities outside the family. Similarly, Nguyen Thi Thanh Tam et al. (2007) argue that inequality in access to education and healthcare persists in subtle yet durable forms, partly due to economic conditions but also to traditional notions such as "education is for becoming a wife."

Access to land and property ownership is also an important dimension of gender equality. Nguyen Huu Minh's (2022) study shows that land use right certificates jointly bearing the names of both husband and wife account for only 11.8%, whereas certificates in the husband's sole name account for as much as 78.3%. This indicates that although the law recognizes the principle of equality, implementation in practice is still strongly affected by patriarchal family structures and gender prejudice. Nguyen Dang Phu (2021) argues that the requirement to record both spouses' names on land use right certificates is an important step in protecting women's rights, especially in cases of divorce or property disputes; however, implementation still faces many barriers, including the cultural view that "men are the heads of the household," language obstacles, complicated administrative procedures, and the cost of reissuing documents. The study by Le Thi Hoa Sen et al. (2020) also shows that women play an important role in agricultural production but are often excluded from land-related decisions, thereby limiting their ability to control and benefit from the family's key resource base.

In addition, one aspect that often receives less

attention is unpaid care work. Nguyen Huu Minh (2022) shows that in most households, women still shoulder the bulk of domestic and care work, yet this contribution is rarely recognized as an economic value. Data from ActionAid Vietnam also show that women spend an average of 4.5 hours per day on unpaid care work, considerably more than men do (Nguyen Thi Trang & Dinh Thi Hoang Phuong, 2023). This situation significantly limits the time available to ethnic minority women for study, learning, and participation in the labor market. In many communities, this division of labor is further reinforced by traditional notions of women's "sacrifice," perpetuating inequality (Phan Thi Thanh Mai, 2009).

Studies on the relationship between customary law and the implementation of gender equality

Studies in Africa show that customary law continues to play an important role in regulating social life in many countries, including Nigeria and Ethiopia, especially in rural areas. In many cases, customary law is reinforced by traditional patriarchal norms, thereby restricting women's rights in property ownership, participation in decision-making, and involvement in socio-political activities (Abimbola et al., 2023). Even in countries with relatively progressive legal frameworks on gender equality, such as South Africa, discriminatory practices persist in certain customary norms. They are sometimes maintained through a degree of compromise by state institutions (Raji & Akolokwu, 2019).

However, some positive progress has also been recorded in efforts to regulate the relationship between customary law and modern human rights standards. In South Africa and Indonesia, legal reforms, together with judicial intervention, have gradually promoted reconciliation between customary law and the principles of gender equality, thereby providing stronger guarantees for women's inheritance and land-use rights (Manthwa, 2024; I, 2023). Women's exclusion from inheritance rights not only carries symbolic implications in terms of social power but also entails long-term socio-economic consequences, increasing women's

poverty and dependence (Dancer, 2017).

In the context of intensifying climate change, restrictions on access to resources and participation in decision-making further increase women's vulnerability, especially when they are given little role in resource management and environmental adaptation mechanisms. In response to this situation, international legal frameworks such as CEDAW have provided a foundation for states to adjust customary law in directions more consistent with human rights standards. However, implementation in practice remains uneven; in many places, women's rights continue to be shaped by the intertwining of belief, tradition, and local customary law (Abimbola et al., 2023).

In this context, many scholars argue that reform of customary law should be carried out through a combination of legal, social, and cultural factors, with the active participation of women and local communities playing a key role. Changes initiated by the very groups affected by customary law are viewed as a sustainable path toward advancing gender equality, especially in societies where customary law continues to exert broad influence (Manthwa, 2024).

Most studies on customary law and gender equality in Vietnam affirm that customary law, as a system of informal rules, is both an effective instrument for regulating community life and a potential barrier to the realization of fundamental human rights, including gender equality.

Phan Dang Nhat (2007) regards customary law as a form of folk institution that reflects traditional community values and can maintain social order, strengthen community cohesion, and resolve disputes. Studies by Nguyen Thi Viet Huong, Le Ngoc Thang, and Tran Minh Hang delve more deeply into realities in the northern mountainous region. In particular, Le Ngoc Thang (2001) points out that in Hmong communities, customary law is closely tied to clan relations and marriage rituals, thereby diminishing women's status both within the family and in the wider community. Tran Minh Hang (2001) also emphasizes that women's lack of choice regarding marriage age or reproduction partly stems from customary constraints such as

child marriage, forced marriage, and the notion that “many children bring much fortune”—constraints that often have stronger practical force than current law in upland areas. Based on field surveys across many provinces, Nguyen Huu Minh (2022) argues that many customary laws maintain only “symbolic rights” for women, while in practice still excluding them from real power, such as property ownership, decision-making, or family representation. This helps explain the contradiction between progressive gender law and actual practice in ethnic minority areas. Nguyen Thi Oanh’s (2021) research in the Central Highlands also shows a similar reality: customary laws of the E De, Mo Nong, Ba Na, and other groups often tie inheritance and marriage rights to the male line and employ systems of reward and punishment based on traditional conceptions without taking gender fairness into account. Although there are some positive elements, such as prohibitions on forced marriage and on acts of abducting women, most of these rules still tend to differentiate roles and responsibilities by sex. Ideas such as “sons worship the ancestors,” “patrilineal succession,” and “men are the heads of the household” continue to exert a strong influence in shaping women’s roles.

More recently, studies by Vu Thi Thanh Minh (2025), including the scientific project “The influence of customary law on gender equality in ethnic minority areas of Ha Giang province: Current situation and solutions” and the articles “The current impact of customary law on gender equality in ethnic minority areas of Ha Giang province ” and “The impact of customary law on gender equality in various aspects of social life in ethnic minority areas of Tuyen Quang province” (Vu Thị Thanh Minh, 2025a, 2025b, 2025c), clarify the mechanisms through which customary law affects specific dimensions of gender equality such as marriage, inheritance rights, participation in community management, and women’s economic opportunities, while also proposing solutions to promote the positive elements of customary law in advancing gender equality in Ha Giang Province. These studies provide highly important practical evidence.

From the above works, it can be seen that implementing gender equality in Vietnam’s ethnic minority areas cannot rely solely on the current legal system; rather, it requires a harmonious strategy that combines statutory and customary law. The selection and revision of progressive elements of customary law to support formal law will be a feasible solution.

5. Discussion

From the synthesis and analysis of studies related to customary law, gender equality, and the relationship between these two fields, several salient issues can be identified that warrant further attention in the coming period:

First, there is a research gap in approaches to the relationship between customary law and gender equality. Existing studies mainly concentrate on two separate directions: studies of customary law as a traditional cultural-social institution and studies of gender equality in various spheres of social life. Although some studies have begun to address the effects of customary law on gender relations, direct and systematic research on the relationship between customary law and gender equality remains limited. As a result, the mechanisms and extent of customary law’s impact on the formation and maintenance of gender relations in communities have not yet been fully clarified.

Second, there is a lack of synthetic and comparative research. Most studies on customary law and gender relations are conducted as case studies in particular communities or among specific ethnic groups. Although these studies provide important practical information, comprehensive comparative works across regions, ethnic groups, or systems of customary law remain lacking. Consequently, the common features and differences in the effects of customary law on gender equality across communities have not yet been adequately clarified.

Third, the dual nature of customary law on gender equality needs further clarification.

Many studies show that customary law both contains positive values that help maintain social order and community ethical norms, and may also preserve patriarchal traditional conceptions

of gender roles. However, existing studies have mainly stopped at describing or identifying phenomena. At the same time, in-depth analyses of the cultural, social, and historical factors that govern the formation and operation of customary norms governing gender relations remain limited.

Fourth, there is a need for research into the transformation of customary law in the context of contemporary development. Processes of socio-economic development, cultural exchange, and the influence of the modern legal system are changing many aspects of community life, including customary law and gender relations. Nevertheless, studies on changes in customary law in relation to the implementation of gender equality in the current context remain rather limited, especially studies analyzing the interaction among customary law, state law, and gender equality policies.

Fifth, there is a need for research linked to policy, practice and sustainable development. In the current context, there is growing concern with promoting traditional cultural values in social governance and sustainable development in ethnic minority areas. However, most studies have stopped at identifying the role of customary law. In contrast, policy-oriented studies proposing solutions to promote the positive elements of customary law in advancing gender equality remain limited or are confined to only a few localities. Therefore, continued

comprehensive and interdisciplinary research on the relationship between customary law and gender equality will provide a scientific basis for the appropriate application of customary law values in implementing gender equality and sustainable development in ethnic minority areas.

6. Conclusion

Customary law and gender equality are two important areas of research in the social sciences, especially in the context of sustainable development and the protection of human rights. A synthesis of existing studies shows that many scholars have clarified the roles and functions of customary law in community life as well as issues related to gender equality. Some studies have examined the effects of customary law on gender relations, indicating that it influences the status and opportunities of women and men in the family and society.

However, direct and systematic studies of the relationship between customary law and gender equality remain limited and are often restricted to particular localities or a small number of ethnic groups. Therefore, further interdisciplinary research should be undertaken to clarify the mechanisms by which customary law affects gender relations, and to provide a scientific basis for promoting the positive values of customary law to advance gender equality in ethnic minority areas.

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LUẬT TỤC VÀ BÌNH ĐẲNG GIỚI: TIẾP CẬN TỪ CÁC NGHIÊN CỨU

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Tóm tắt: Luật tục là một thiết chế xã hội truyền thống có vai trò quan trọng trong điều chỉnh các quan hệ xã hội ở nhiều cộng đồng dân tộc. Bình đẳng giới là một trong những mục tiêu quan trọng của quá trình phát triển bền vững và bảo đảm quyền con người hiện nay. Trong bối cảnh đó, việc nghiên cứu mối quan hệ giữa luật tục và bình đẳng giới ngày càng thu hút sự quan tâm của nhiều nhà khoa học thuộc nhiều lĩnh vực. Bằng phương pháp tổng quan và phân tích tài liệu, bài viết tiến hành hệ thống hóa, đánh giá các công trình nghiên cứu liên quan đến luật tục, bình đẳng giới và mối liên hệ giữa luật tục với việc thực hiện bình đẳng giới trong cộng đồng. Trên cơ sở đó, bài viết gợi mở một số vấn đề cần được tiếp tục nghiên cứu trên cả phương diện lý thuyết và thực tiễn thực hiện.

Từ khóa: Bình đẳng giới; Đánh giá các công trình nghiên cứu; Hệ thống hóa; Luật tục.