



MARIA DA PENHA LAW AND ITS INAPPLICABILITY IN THE CITY OF IBICUI –BA

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ABSTRACT

Violence committed against women on the marital relation scope is a historical and cultural issue that still nowadays is part of Brazilian women's reality. This issue becomes more complex, when facing the difficulties of measuring its social impact that is noticed in interior towns, due to the lack of records and statistics regarding the violence to the female gender. This way, this paper is the outcome of a research about domestic violence against women in the city of Ibicuí-BA. It is a qualitative research based on the on the analysis of semi-structured interviews with seven women victims of violence. As the work's outcome, we have noticed that the lack of effective public policies and an effective protection network are factors that add up to the Law's inapplicability, and it is harder for the victim to break the cycle of violence.

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INTRODUCTION

Gender Violence is characterized as one of the cruelest forms of Human Rights Violation. One of the most harmful manifestation of this violence is the marital one, a domestic violence category that happens among the couples in the affective relations' space. Of private character, this kind of violence represents a powerful mechanism of social control. Taking into account that domestic violence is such a glaring issue and it is difficult to combat, this paper aims to analyze the importance of Law 11.340 / 2006 or Maria da Penha Law, an instrument initiated to restrain and prevent violence against women, its application and applicability gaps in the city of Ibicuí-BA. Firstly, it is important to highlight that our society was built upon a primarily patriarchal family structure, and in that way it is yet very unequal concerning the roles intended to men and women. This way, we comprehend that the female sex is hit with a higher intensity by the discrimination and violence manifestations, notably domestic marital violence that presents itself as a grave social problem that impairs thousands of women every day in all parts of the world. This violence form is a severe manifestation of gender inequality and hits all ethnicity, religion and sexual orientation.

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age groups, different educational levels, economic status, age, The relationships between sexes, being in the private space of the home or in the public space of civil relations, were heavily characterized by a power hierarchy, in which inequality and exclusion of women ruled, explained on the basis of physical, sexual and biological differences. The sociocultural establishment of the feminine identity and the definition of its parts as a passive and submissive figure created the proper space for the exercise of male oppression. Consequently, in a culture like ours inheritant of the patriarchal order, Saffioti (2004) discuss that women are seen as objects of male satisfaction while men as power owners delimiting the women's conduct, with the society's consent, which approves and tolerates this behavior. According to the author: "women are educated to live the impotence, men are educated to live the power. As they do not know how to experience impotence, they breach the other's space. Through violence, they search for affirming their self "(SAFFIOTI, 1998, p.29). The violence practiced in this scope is hard to report once prevails in the social memory the need for preservation of the family institution that overlays as a value to the physical integrity of the victim. Until now, women were socialized to comply with their destiny, like to be a good mother, wife, and take care of the family. These matters, associated with fear, emotional and financial dependence on their partner, guilt, the disability of the court system, and the lack of effective public policies, what

makes that many women continue to live in situations tagged by violence. In accordance to Cunha (2007), in general terms domestic violence involves physical, sexual, emotional and patrimonial abuse of a subject that lives at the same residence as the offender, independently of relation existence, in this modality it is included marital violence against women. The consequences of domestic violence are extremely harmful, it leads to serious problems in health, work, self-esteem and other scopes on women's life. It is worth highlighting, in line with the Saffioti's thinking (1999b) that although domestic violence happens more frequently in the private environments of homes, it can also be manifested on the street, bars, victims job, among other places and this issue harm mainly women and children. Saffioti e Almeida (1995) highlight that the violence from men against women, is historically and numerically relevant not only from the structural. In this scenario, in the 1970 and 1980s women and feminist movements performed an important part in the politicization of the domestic space. The fights led by these movements brought visibility to domestic violence that from that time stopped to be seen only as a private matter restricted to the domestic space, and earned public visibility. From that time, reports of the most diverse forms of discrimination suffered by women have become legitimate. Among these movements' demands was the recognition of the right to a life without violence. The state and the society were charged for the punishment of the offenders and the recognition of gender equality. This way, some social and legal measures were performed such as SOS Women, established in 1983, and the installation of the first Special Police Station for Women Care (DEAM), established in 1985 in the State of São Paulo. In 1988, the Federal Constitution declared that "men and women are equal in rights and obligations" having as goal to fight domestic violence against women and in 2006 the Law 11.340 / 06 or Maria da Penha Law was promulgated, which is the analysis subject of this paper.

MATERIALS AND METHODS

In methodological terms, the present paper is of qualitative and descriptive character. Godoy (1995, p.62) catalogues a series of fundamental characteristics of this kind of research, like: the direct data source is the natural environment and the key instrument is the researcher; the descriptive aspect; the significance that people give to things and their life as the investigator's concern; and the inductive focus. The Qualitative research usually deals with people and their creations and these research subjects must be noticed as social actors, respected in their opinions, beliefs and values. All data collection work should note that "the research subjects speech's is indicative of structural conditions, systems of values, norms and symbols" (MINAYO, 2008, p.204) and is for that reason is so rich. Concerning the interviews choice, we follow Minayo's (2008) comprehension that it is a strategy quite used in the work field process, offering an opportunity for a face-to-face dialogue and its use enables the researcher to comprehend the respondents' problems and desires. Through this method it is possible to realize more closely the beliefs, attitudes, values and motivations of the social actors and social contexts that these people are embedded. The use of interviews in accordance with Lakatos e Marconi (2010) still enables the researcher to check the facts occurred to know people's opinions about the facts, to get to know people's feeling about the fact or its meaning to them and to find out

the factors that influence the thoughts, feelings or people's actions. When we chose to use the semi-structured interviews, we used a script with closed questions of identification and classification, but primarily with open questions to allow the respondents to speak more freely about the proposed subject in a way that they could present their experiences and feelings, respecting their values and what would be more important for them to describe. In the pursuit for answers to a problem of this complexity and low visibility in the city of Ibicuí, we interviewed seven women who suffered or still suffer violence from their husbands or partners. The interviews performed were recorded and afterwards transcribed, after the participants consent. Furthermore, the victims' identities were preserved to secure that none of these women could be identified. From this perspective, we have discussed about the domestic violence issue mainly the marital violence suffered by women in the city of Ibicuí (BA). The choice for the study of violence as the research's central pillar is related to the fact that the city of Ibicuí lives with the significant presence, of a male culture in which the man is noticed as the figure that has power in the family and for this reason, in line with Cunha (2007), he is given the right to use with his partner measures that he considers necessary to preserve and strengthens his authority. In the investigation process for data collection, we checked that the lack of a specialized service to help the female victim makes some women to stay in a situation of violence. From the respondent women reports some issues have caught our attention, among them the fact that in Ibicuí the Maria da Penha Law is frequently not applied in accordance with the legal determination. It is because, there are representation resigns even before the courts becoming aware. In other words, after denouncing the violence suffered, or the victim regrets the reports and asks the authorities not to go forward or the police themselves mediate the conflicts without starting an investigation. For that matter, when the report is underestimated by the competent authorities, the victim is left abandoned.

RESULTS AND DISCUSSION

The women's movements fights in Brazil were essential to state the human rights indivisibility and to highlight the importance of establishing a legislation ruled by women's protection. The action of feminists in the public space fomented the dialogue establishment with the Legislative and Executive powers, leading this way to the setting of public policies that had as focus the confrontation of violence against women (BARSTED, 1994). This way, in August 7th, 2006 the Maria da Penha Law was promulgated with the goal of repress domestic violence against women. This instrument meant a significant legislative advance since the emergence of the Magna Letter of 1988 due to the recognition of violence against women as an infringement of human rights. Previously, because it can be seen as a private issue, it did not belong to the public and government's agenda until the law's implementation, when came out a precise conceptualization of domestic and family violence, besides listing measures for the confrontation. This law's creation istied to the effervescence of international policies caused a direct impact on the Brazilian public institutions on fighting gender violence, particularly the domestic violence committed against women. In accordance with CNJ (National Council of Justice), the main breakthroughs brought by Law 11.340 / 2006 were:

- The typification and definition of domestic and familiar violence against women.
- The setting of domestic violence forms against women like physical, psychological, sexual, patrimonial and moral.
- The determination that domestic violence against women is detached from their sexual orientation.
- The definition that the woman can only renounce the report in front of the judge.
- The prohibition of monetary penalties (like the payment of fines or basic food baskets).
- Having removed from the special criminal courts (Law 9.099 / 95) the competence to judge the crimes of domestic violence against women.
- The change of the Criminal Procedure Code to allow the judge to enact preventive custody when there is a risk to the woman's physical or psychological integrity.
- The change of the penal executions law to allow the judge to determine the offender's mandatory attendance for rehabilitation and reeducation programs.
- The creation resolution of special courts for domestic and family violence against women with civil and criminal competence to encompass family issues resulting from violence against women.
- The rise of sentence by a third for the case where domestic violence is perpetrated against women with disability.

Consequently, it is incontestable that the Maria da Penha Law generated changes in the political and legal domain. Meanwhile, as patriarchal values continue rooted in society, this kind of violence is still managed as a secondary issue by law operators who, although recognizing the growth in the amount of women in situations of violence they are still incapable of promoting proper care and the effective applicability of the existing legislation. In the city of Ibicuí, location chosen to perform the research, this reality is not different, a reality that can be confirmed through the respondent women reports highlighting the fact that in this city the Maria da Penha Law's frequently not applied in accordance with the legal determination. It is because of the fact that there is representation resignation even before the courts are aware and because the fragilities of the public policies confrontation impair the fulfillment of protective measures, flagrant arrest and immediate assistance to victims at risk of death. Maria, Valentina and Rosa's reports exemplify these statements:

I recorded it and delivered to the police the phone with him telling that he would kill me that he would shoot on the head, I have four or three like this, very heavy and the police didn't do anything. When he started to hurt me I would call the cell phone, and the police did nothing, this cell phone is in with the police, in the police station[...] And this phone, this cell phone, the police chief back then was unfortunately transferred, she said she would refer to the expertise I don't know if in Salvador or Itapetinga, but unfortunately she was transferred and when I wanted to know about this cell phone no one at the police station was certain, some said that it is in Itapetinga and I have to go there and see. But I am not the one to arrange it, who has to arrange it and know where it might be is the police. (MARIA, 53 years old, Complete High School). People say you should press charges, but how will I press charges? Here in Ibicuí only works to press charges in the morning, the police

goes after him, pick him up and arrest, beats him up, at noon they release him, and where is the police that will be there to protect me? In the afternoon or at night, they won't be there until I call and find out the number, because 190 doesn't work here, not even 190 works here, here's a cell phone number, you have to call the cell phone, and if I don't have a number, I don't have the number? How do I call in an emergency time? And until they get here? He would have killed me long ago. (VALENTINA, 31 years old, Complete Elementary School).

I thought about going to the police, but I would go and the police did nothing. Here in Ibicuí, I would go after the police, and the police would go after him (the offender) on the day but the other day they wouldn't go anymore, the police didn't make the arrangements. (ROSA, 34 years old, Elementary School).

This way, we comprehend that although the changes produced by the public policies implementation, most importantly with the emergence of the Maria da Penha Law in the legal and political areas are unquestionable we still have a long path to cross regarding the production of a change able to prevent, repress and eradicate violence against women, at last values inherited from the patriarchal culture still reverberate in our society, including among law applicators cooperating to the naturalization and sustaining of power inequality between the sexes remains present in the relations. Maria's report enlightened this situation:

I knew he was purchasing a lot next to my house, I had to use a protective measure that I had to see if I they could avoid it from happening, I called the police and he lied to them, he said that the protective measure I had was no longer valid, that I was a liar and that I was deserted, that my family didn't want me, that they didn't worry about me[...] The police officer turned to him and said that he wouldn't arrest him, that he would give him a chance to go to the Public Prosecution office and request the prosecutor in writing what she was telling there, that my protective measure no longer valid, in other words that the measure in my hand was useless, his word telling that it wasn't valid was more valuable to the police officer. (MARIA, 53 years old, Complete High school). In the course of this research, we noticed that the relation of Ibicuienses women with the laws constructed to fight domestic violence yet need to be published and to be practiced. That's because, on that path it is mandatory to value the society's dynamics, looking at the laws as products of this society, formulated, redesigned and even kept socially, having consequently a cultural background. According to the organization of each society and to the moral values cultivated in it, legal reformulations can be harder to be applied, as happens in the case of violence against women reduction, an issue that is still hidden in the city of Ibicuí.

Final Considerations

This way, from the premise that domestic violence against women is a historical issue of gender inequality, so we comprehend the Law 11.340 / 2006 as a beneficial tool directed to surpass these practices, being able to indicate a possible paradigm variation regarding the non-acceptance of violence against women. However, we highlight that the above-mentioned Law lacks on a more precise applicability, because many cities do not count with an effective and

protectivenet work to shelter women, a reality that leaves the victim in a vulnerable situation such as in the case of Ibicuí.

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