



THE WOMEN MOVEMENTS ON FACING VIOLENCE AGAINST THE WOMAN AND THE MARIA DA PENHA LAW

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ABSTRACT

This paper is part of our reflection regarding the performance of the women's movement in Brazil, a topic that we performed in the dissertation: "Memory and Will to Tell: Vitória da Conquista Women's", from the Post-Graduation Program in Memory Language and Society, State University of the Southwest of Bahia (UESB). Our goal is to examine the women's movement action in the context of facing violence against women and the creation of the Maria da Penha Law. That way, it is a paper of theoretical and descriptive nature, based on the contributions of important authors such as Saffioti, Teles, Santos, Izumino, Cunha, among others, who focused on the theme of violence against women in Brazil.

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INTRODUCTION

The women's movement³ action in the context of confronting violence and the mobilization and organization for the creation of the Maria da Penha Law is a result of the realization that the phenomenon of violence was systemic and that, at that moment, it urgently needed to make efforts to combat such phenomena. The movement understood the need to take the spoon in cases of violence against women, and that this violence was not only a matter of criminalization, but also more complex issues involving prevention, victim assistance and punishment of the alleged author. The women's movement action in the context of confronting violence and the mobilization and organization for the creation of the Maria da Penha Law is an awareness result that the phenomenon of violence was systemic and that, at that moment, it urgently needed to make efforts to combat such phenomena. The movement understood the need to get involved in cases of violence against women, and that this violence was not only a matter of criminalization, it went further to complex issues

involving prevention, victim assistance and punishment of the alleged author. This paper has as main focus the analysis of the women's movement action in the context of the confrontation with violence against women and also show the necessity of creating the Maria da Penha law. For a better understanding of the topic, we have dialogued with important authors such as Saffioti (2007), Teles (2002), Santos (2008), Izumino (2004), Cunha (2007), among others who have provided important contributions to the discussion and confrontation of violence against the woman in Brazil. Initially we focused on the phenomenon of violence against women and how this became the subject of discussion of women's movements and afterwards in the actions of these movements in the process of creating the Maria da Penha Law.

Development: Violence against women was always present in the Brazilian scenario, due to the cultural heritage of the patriarchal order that attributed to the man all forms of power, including the life and death of his subordinates. Women were constantly violated in their rights; the white women were considered as wives and for the reproduction duty, and the black as the sexual object of their desires. If women were against their subordination condition they justified the violence

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committed against them. This kind of family structure, based on the male's power, favored the presence of domestic violence, but this violence was invisible to society, invisibility that resulted of the sacredness that permeated families, preventing this way any act of denunciation.

In this context Cunha (2007, p.40) affirms that: As everywhere, in Brazil gender violence is present in the relations between men and women, since here the man has the prerogative to dictate the rules and demand that they are fulfilled by the women. This type of violence is practiced on a daily basis, as if it were the most natural thing. This is not to say that the institutions, such as the police and justice, often decide in favor of men, considering legitimate the "punishment" that they practice against women when these fail to obey their orders.

Saffioti (1997) apud Cunha (2007: 44) explains that "this sacred family character for a long time and the undeniable power of man over the woman and children prevents people from reporting family domestic violence and the violence practiced in almost every society".

In this passage, Teles (2002, p. 19) reinforces this thematic, by affirming that:

Domestic violence is the one that occurs at home, in relationships between family members, between men and women, parents, mothers and children, between young people and the elderly". The woman has been subdued to this situation for centuries, and the violence practiced in these relations has obtained contours of banality.

For Cunha (2007), the violence trivialization is the background that explains the way in which society deals with the problem. It's the classic saying: "No one should poke their nose into a husband-and-wife fight." reverberates throughout society. This reality only changed on the second half of the twentieth century, more precisely in the late seventies and early eighties, when women's movements gained space, arising from there groups of women defending the flag of the fight against women's violence. The women's movement occupies the streets and demands from the media and the State the recognition that violence practiced against women in the domestic sphere was a social problem that society needed to provide visibility and to combat. This visibility of the violence against women performed by her closest associates follows the reports of human rights violations committed by the military in the military dictatorship.

In this context, Izumino (2004, p.2) comments:

Violence against women played an important role for the women's movement in Brazil. In the 80s, favored by the process of political redemocratization that was taking place in the Brazilian society, the women's movement began to look for a dialogue with the State, charging for the urgency of policies that would respond to the institutions of prevention and punishment of violence against women.

Still in this context of the combat of violence against women, the women's movement carried out meetings and seminars in various states that had as discussion agenda issues such as autonomy and other priorities of the women's movement to confront violence, as well as the need for a partnership with

the State to promote the creation of public policies to protect and guarantee the rights of women victims of violence. The Women's Movement did not feel secure in maintaining a close relationship with the State. Nevertheless, it understood that only through a democratic partnership it would be possible to implement a set of measures of public policies, not only to combat but also to prevent violence against women and it would only happen through this partnership. With this understanding, the women's movement creates a demands agenda, beginning to press and negotiate with the State the creation of specialized institutions that would welcome and protect the rights of women victims of violence. At that time, the establishment of a specialized women's police station (DEAM) was the most likely "measure" to combat violence and the first step of this relationship.

The first Women's Defense Department was created in August 1985, in the State of São Paulo. The initial project proposed that these police stations should be constituted in a space that would provide women victims of violence with safe conditions for the execution of their accusations against the offenders. For this reason, the services provided by these institutions should be provided by a team composed by women: delegates, investigators, police clerks, psychologists, social workers, all because of the need to provide victims of violence with a differential treatment, as they were almost always beaten by their husbands, partners, and boyfriends.

This way Saffioti (1987, p. 79) says that:

The creation of the Police Offices for the Defense of Women resulted from this idea that people considered unequal by society should not be treated by the same laws. The police stations specialized in the care of women victims of violence have created conditions for these victims to report their offenders. Everyone from the investigators, through the police clerks, to the head delegate, are women.

The implementation of these Specialized Police Stations for Women's Services (DEAMs) served to increase the number of reports of violence and, from their records, to give visibility to the society, of the regularity and the dimension that occupied domestic violence in women's lives. Still in this line of visibility, we can not fail to mention the important contribution that the DEAMs gave at that moment and continue to give, from their assistance to the victims. In order to understand and combat the phenomenon of violence, it is very important the statistical data to identify the types of crimes most practiced, the age of the aggressors, the social class, the frequency in which occur the reports and other information that other services do not have. However, in this structure, we also noticed the disabilities of the services performed so far as well as the expected results, and this ended up provoking a series of criticisms from the women's movement to the state governments for not observing the particularities of the cases that would be treated there.

On these situations of precariousness Dalbert and Gregori (2002) inform that:

Feminist leaders and members of the National Council of Women's Rights have, however, reported the abandonment and neglect faced by these police stations. At the same time, each new year, police stations have been created in initiatives that apparently gained autonomy from the

feminist movements, changing themselves into proposals generated almost exclusively in the state security secretariats.

Corroborating with the authors above, Santos (2008) affirms that these police stations operating without being adequately equipped, isolated, without their delegates and properly trained employees and without a support of assistance services for quality care, became the target of criticism because of the protective system's inefficiency. In face of this situation, some women connected to the National Council of Women's Rights (CNDM), with experience in dealing with women that are victims of violence and aware that solving the problem was not only by the criminalization of violence, they elaborated a series of proposals that rescued the initial project of the DEAMs. For them, the operation of these police stations should be supervised by the CNDM; the police should be trained on gender issues in order to be able to deal with the victims behavior in the face of the claims; the police stations should offer psychological, legal and social assistance to the victims.

In this proposal, records of police occurrences would be connected to one of the stages of violence criminalization against women, and the other steps would be turned to the awareness of these women about the criminalization of violence, their rights and how they could come off of these violent relationships (IZUMINO, 2004). Currently, even with all the problems, DEAMs continue to be the main public policy to combat violence against women in the criminalization and punishment area (IZZUMINO, 2004). That way, it should be pointed out that parallel to these discussions of the police stations functioning, there was a debate on how violence against women was treated in the State. The police stations sent serious crimes of violence against women to the Special Criminal Courts to be prosecuted under the terms of Law 9.099 / 95, an institute that incorporates the prerogative of the least offensive potential and the criminal transaction with alternative penalties that could be converted in fines, services provided to the community and therapeutic groups participation.

In Pandjjarjian opinion (2003, p. 112)),

The approval of the law is part of a movement known as "minimal criminal law" or "moderate abolitionist" that looks for minimizing the use of the penal system in solving social conflicts. This movement aims to reduce the application of criminal law, preventing the creation of new criminal offenses; advocating by the "decriminalization" and / or "unpunishment" of conduct; or even reducing the state's intervention and response by proposing, for example, the application of alternative sentences to arrestment in crimes of minor offensive potential. "This law was therefore thought in the context of tendencies and searches for alternatives to decriminalization of offenses less valued as having less offensive potential, in other words, less serious crimes.

It is important to highlight that this law was approved with the aim of speed up and unlock the prison system, so it brings up the principles of orality, informality, procedural economy and celerity (art. 2), which are followed for the purpose of repairing the damage suffered by the victims (pecuniary fines,

basic food, community services) and the imposition of non-private sentences (PANDJIARJIAN, 2003).

It is worth noting, that this law considered as a crime of less offensive potential the criminal offenses that had as maximum penalty provided by law, a time shorter or equal a year. This way, it did not serve to suppress or even reduce the violence against women, which was increasingly present in statistics throughout the country. The need for an affirmative action of a preventive and punitive character that placed gender equality on the material plan was very clear.

This way, Morais and Sorj (2009) affirm:

It was extremely important for feminists to create effective punitive mechanisms in the country for cases of "violence against women" on the grounds that the JECRINS failed to account for the complexity of this kind of violence and the alternative penalties and measures did not have a punitive character, since they could be converted into fines. Furthermore, the argument of not creating effective mechanisms to combat "violence against women" was strengthened among the feminists, the Brazilian State would not be in accord to the international conventions of human rights, of which it was a signatory.

The Vienna Conference in 1993 and the UN Constituent Assembly, carried out shortly after that conference, served as a milestone for this recognition. In 1994, the American States approved the Convention for the Elimination, Punishment, and Eradication of Violence Against Women, called the Convention of Belém do Pará, which was named after the event occurred in that State. "This convention will define violence against women as gender violence and as a violation of human rights" (SANTOS, 2008, p.22). The recognition of violence against women as a violation of positive human rights in institutes such as conventions, agreements and others was the result of the organizational power of the women's movements and the international feminist movements.

This recognition has been absorbed by these movements and non-governmental institutions to solve cases of unresolved murders as well as support for claims by institutes that treat violence against women as a violation of human rights. In this perspective, the Feminist Consortium, formed by fifteen (15) NGOs, whose priority was the combat of violence against women, based on the international institutes for the protection and assurance of these rights, of which Brazil is a signatory, prepared and presented a preliminary draft of a law that treats violence against women as a violation of human rights. The justification that the consortium presented to remove crimes of violence against women under section 9.099 / 95 was that Brazil was in disagreement with what was established in the Convention of Belém do Pará, in other words, it was not giving the proper treatment to the women violence cases as proposed by that institute. These manifestations of the women's movement and the feminist legislative branch culminated in the approval in September 2006 of Law 11.340 / 2006 - Maria da Penha Law.

In this viewpoint, international instruments of human rights, already ratified such as the Convention on the Elimination of All Forms of Discrimination Against Women and the Inter-American Convention on the Prevention, Punishment and Eradication of Domestic and Family Violence, have been incorporated into the legal norm. This ratification, especially

with the Organization of the American States (OAS), allowed for the referral of murders and attempted killings cases of women to the Inter-American Commission on Human Rights, like the case of Maria da Penha, who suffered two murder attempts by her husband, the university professor Marco Antonio Herredia Viveiros. In 1998, CEJIL-Brazil (Center for Justice and International Law) and CLADEM-Brazil (Latin American Center for the Defense of Women's Rights), together with the victim Maria da Penha Maia Fernandes, forwarded to the Inter-American Commission (OEA) petition against the Brazilian State, regarding the paradigmatic case of domestic violence suffered by her (Maria da Penha case 12.052) (ACTIONS IN GENDER, CITIZENSHIP AND DEVELOPMENT, 2004, page 16).

Until the request for the measures on the Maria da Penha case to the Organization of American States (OAS), the Brazilian Judiciary had not responded to the case, helping this way that the offender continued released. As a result, the victim and women's rights organizations reported Brazil for being intolerant of domestic violence against Maria da Penha and for failing to take appropriate measures to punish the offender despite of the denunciation. The Brazilian government was convicted of omission and tolerance of impunity in the treatment of cases of domestic violence, being recommended actions to change legislation to repress violence against women and pay a compensation of twenty thousand dollars to Maria da Penha. The Brazilian State accepted the determined. The case of Maria da Penha also served to spotlight the neglect with which Brazil dealt with cases of violence against women. The Maria da Penha law was created in response to the tireless struggles of the women's movements and to assist with the Convention on the Elimination of All Forms of Discrimination against Women and the Inter-American Convention to Prevent and Eradicate Violence against Women. This Law was sanctioned on August 7, 2006 and entered into effect on September 22 of that same year.

The 11.340 law arise and brings with it innovations in the sphere of care and prevention that constitute an affirmative public policy, whose goal is to deconstruct the notion of historically built domination of men over women.

On this matter Dias (2010, p.16) states:

In spite of all the advances, the equivalence between man and woman carried out so emphatically by the Constitution, the patriarchal ideology still perpetuates. Sociocultural inequality is one of the reasons for feminine discrimination, and mainly for its domination by men, who see themselves as superior and stronger.

In this sense, the main focus of this Law is the combat against the various forms of domestic and family violence against women, and for this it brings a series of innovations such as: the removal of the jurisdiction of special criminal courts (Law 9099/95) to judge and prosecute domestic and family violence crimes; the change of the Criminal Code to support the ordain of the arrest in flagrant or preventive of the offender, and for its release the payment of the bail; the application the Public Prosecutor's Office the request or the offended of urgent protective measures by the Judge of the Special Criminal Court; the explanatory listing of specifying forms of domestic and family violence against women; the assistance provision of women victims of domestic and family violence in accordance

with the principles and guidelines foreseen in the Organic Law of Social Assistance (LOAS), the Unified Health System, and the Unified Public Security System; the guidelines of public policies to restrain domestic and family violence against women that will be made through an articulated set of governmental actions in the sphere of the Union, the State, the Federal District and the Municipalities; the possibility of the representation resignation will only be possible before the judge, in a specific hearing and hearing the representative of the Public Prosecution, and this is due to the crime of bodily injury resulting from domestic violence to be part of the crimes of unconditional public criminal action; the creation of the Domestic and Family Violence Courts against Women, incorporated into the Regular Justice, with jurisdiction in civil and criminal areas (MISTRETTA, 2011). Therefore, the law brings in its scope provisions that if applied effectively it will bring good results. However, we know that for that to happen, a greater sensitivity is required by society and the competent institutions to create the necessary structure for its implementation and a greater commitment of the Judicial System.

Final Considerations: History has shown that the Brazilian woman condition is not distinct from the universal rules of female oppression and, like those of other societies, these had to be placed in the condition of subjects of the condition transformations. In this trajectory of change, the feminists engaged in social and women's movements in the late seventies and early eighties, and began to fight for political redemocratization, amnesty and women's rights, bringing to the public arena hermetically sealed problems in the private space, as is the case of violence committed against women, especially in marital relations. The year 1975 as the International Year of Women promoted by the UN was an excuse to unleash the manifestations and actions of women in order to absorb the demands inherent in violence against women and to prioritize their fight. The 1990s were also very important for the women's movement with respect to the issue of violence, because it enabled the recognition of violence against women as a violation of human rights, the institutionalization of a specific law that treated in another way crimes committed from the point of view of gender. So we can affirm that rights and spaces of power did not reach women as an expression of the will of the social and governmental spheres. The changes achieved were the result of many efforts, many struggles and boldness of the women's movements and the feminist movements to ensure citizenship. We also highlight that these achievements have not completely changed the socio-cultural heritage of the patriarchal imagination that insists on remaining alive in society in the third millennium which means that women still have many challenges ahead.

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