Vulnerability in focus: domestic and family violence against women

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1. Introduction[2]

Amongst other social disturbances, violence against women within the domestic and familiar domain it is an evil that afflicted societies from the world for centuries. This conflict, supported by Brazilian Criminal Law, creates social instability and keeps women victims in vulnerable situation

It is important to clarify that the Law 11.340 was a great achievement for the Brazilian society bringing a more strict treatment towards offenders supported by it, and its main objective is to inhibit and prevent such practice of crimes. However, this legislative strictness has not been able to decrease the cases that enter into the Justice System.

In this present essay, firstly, there are some considerations about the specific Brazilian legislation related to familiar and domestic violence against women, Afterwords it is going to be analysed the practical field where these conflicts are placed as well as the vulnerability related to its management.

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[2] This present essay is a part of a research initialized during the Law PHD, which I have been carrying on in the postdoctoral in PPGD/UNESA, with scholarship from CAPES, together with the Nucleus of Studies on Law, Citizenship, Proceedings and Discourse at Estácio de Sá University. Consequently, many of the reflections here presented have already been published beforehand.

2. Brief considerations about Law 11.340/2006

The Law 11.340, also known as Maria da Penha Law. It is specific legislation that creates mechanisms to inhibit and prevent crimes of domestic violence against women. It brought a stricter treatment towards offenders, inserted social and protective policies of criminal nature, establishing the enrolment of offenders in the recovery and re-educational programs, aiming crime prevention.

Maria da Penha law is considered a historic landmark in the defence of women´s rights and, according to the United Nations, (UNO) it is the third best and more advanced world legislation facing family and domestic violence against women, only behind Spain and Chile. It is one of the most known Brazilian Laws by our population. However, in the course of my researches it was possible to observe that, in practice, our society has not yet internalized it and have not yet socialized with the rules determined by this law. It was also possible to observe that the fact of such rules be imposed, make the subjects do not act actively in the standardization process, what direct impact in the management of the conflicts by the Judiciary System.

The Supreme court (STF), in plenary section realized in 09/02/2012, judged the requirements from the actions ADC 19/DF[3] and ADIn 4.424/DF[4], confirming, respectively, a constitutionality of the articles 1º, 33 e 44, moving away, consequently, the incidence of the Law 9.099/95 for judging the penal offenses and misdemeanors occurred in the home environment and confirming the stiffening of the law 11.340/2006 by removing the decriminalizing measures, making conciliation impossible and reinserting the possibility of arrest in flagrante delicto in defined infraction of lesser offensive potential in that Law. This decision from the Supreme Court reaffirmed the penal rigor penal brought from Law Maria da Penha.

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[3] Judgment of the Declaratory Action of Constitutionality 19/DF. Rapporteur: Min. Marco Aurélio. Available at: http://portal.stf.jus.br/processos/downloadPeca.asp?id=217154893&ext=.pdf. Last access: 10/03/2018.
[4] Judgment of the Direct Action of Unconstitutionality 4.424/DF. Rapporteur: Min. Marco Aurélio. Available at: http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=6393143. Last accessed on 10/03/2018.

During these 15 years, there were many changes in Law11.340/2006. Always following the rigor from penal legislation, amongst them it is possible to quote the concession, by policial authority, of the protective measure of removal the offender from home or from the fellowship of the offended (article 12-C), and the classification of non-compliance with judicial decision that grants urgent protective measure. We can still mention the Law 14.132/2021 that has altered the Penal Code including the article 147-A that typifies the crime of persecution (stalking), that directly reflects in domestic and familiar conflicts against women, once, many of these conflicts involve repeated offender conduct such as physical and psychological threats, towards freedom as well as the disturbance and/or privacy of the victim.

Since the creation of the Law Maria da Penha, many campaigns[5] have been realized by the Justice National Council (CNJ) and endorsed by the Justice Courts from the states and from the federal district, together with the Institutional Defence Organizations for the defence of the Women´s Rights (Secretariats, Coordination, NGOs, etc). However, there are still some gaps in the confrontation towards prevention to Familiar and domestic violence against women, consequently, debates and researches, inside de proper Judiciary, have been incessant in order to search "solutions" that can be able to minimize the amount of demands and, at the same time, that can be satisfactory answers towards community.

3. The Conflict of Familiar and Domestic Violence against women and the vulnerability in the Justice System

I name of *familiar criminal conflict* those ones protected by Law 11.340/2006, for considering judicially, guarded from penal rights and, concomitantly, integrated to the structure, organization and protection of family. They are conflicts typically framed in the "raw material"[6] from social sciences, being a complex phenomenon that occurs in different social environments and, although some average of these effects are linked to the use of, legal and illegal drugs it is not easy to segregate causes and particular motivations.

[5] DAMATTA, Roberto. Expression used by the author in the book Relativizing (p.6) when defining social sciences or human sciences.
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It is important to observe that the consequences from domestic and familiar violence against women reach the entire familiar system and this familiar system also needs to be considered one of victims from this crime. It is what I name de "affective dimension of the conflict".

To take care of this familiar system is another stand of the public politics under the Judiciary Power and, particularly, in the stand of the do Executive Power. Such policies still try to be effective in preventing crimes.

Although, as it is possible to observe, there are still many gaps in the confrontation and prevention towards domestic and familiar violence against women, reason for the incessant debates and researches searching for exits that are able to minimize the amount of processes, the number of cases of this violence, and that, at the same time give satisfactory answers for the society.

Many adversities are experienced by the ones involved in domestic violence conflicts, as well as those ones involved in their management. And, for understanding these conflicts and the operation of the Brazilian Penal Justice it is necessary to look forward those that experience it and for their ways to regulate and manage them. It is necessary to look forward normativity. For this reason, my research searches for the support from social sciences and the field research[7] has a qualitative approach.

In these moment I make some notes observed my field research that bring vulnerability into the Justice System in what involves management of the domestic and familiar conflicts against women.

1) The number of professionals in the justice system is not enough to handle to the amount of processes.

This causes the impossibility to a proper management of these conflicts and creates difficulties in the access to justice. These two reasons, by the way, cause a delay in the jurisdictional provision, and consequently, its discredit.

[7] During my doctorate, my field research was carried out in the cities of Nova Lima and Belo Horizonte, both in the state of Minas Gerais/Brazil.

2) Many cases that enter the criminal justice system as crimes of domestic and family violence fall under the jurisdiction of Civil Law.

This happens because the attendance at the Police Station is fast compared to the judicial one. The offended does not leave the Police Station without being attended to.

3) It can be added to the two points above relate, the delay of the jurisdictional response. And, many times, the Justice System when attending to those cases is not able to prioritize serious cases.

4) The parties involved in the domestic violence conflict do not understand how the justice system works.

This happens since the moment they report the fact in a Police Station and is repeated in relation to the judicial process.

5) There is another point observed by me: the lack of proper treatment to offenders. And, here, it is necessary to note that:

5.1) A high number of such aggressors, according to institutional research, use alcohol and illicit drugs. And the aggressions happen when they are under the effects of these legal and illegal drugs.

Those questions do not justify an aggressive attitude (there is not what can justify it). However, the imposition of the penalty, for itself, do not solve the conflict. The offender needs a expert support. The lack of proper treatment, many times, generate the recurrence of the offense.

5.2) Great part of these aggressors do not understand yet that their actions characterize as crimes. It is necessary to make awareness work.

These points, here observed, generate recurrence.

6) It was possible to notice that a large part of those involved in the conflicts have more anguishes than those facts directly related to Maria da Penha law.

4. Conclusion

Law Maria da Penha, as mentioned above, brought a more aggravating treatment to the um offences, typified by it reaching, in this way, female individual rights. Amongst the purposes of this Law, as pointed in the Explanatory Statement of The Law, there is the extinction of socio-cultural inequality and, consequently, the eradication of domestic and familiar violence against women. However, during these 15 years, since its enactment, The Judiciary has not been able to structure itself for manage such familiar penal conflicts.

The laws are created and imposed for the Brazilian Legal System, and it is up to the Criminal law the social control and the "maintenance of peace" under the threat of punishment (penalty) towards who violate peaceful coexistance. So, to the Law, only and only the creation and the imposition of the law would be enough for citizens to submit to them. "However, the standard plan, by itself, has proved incapable of conforming and shaping the intended behaviours in its texts". (DUARTE; BAPTISTA; 2014, p.5)

These are inconsistences in the Justice System. The incessant creation of laws, which often reach the legal system to appease the social clamor, followed by a profusion and doctrinal theories and counter-theories. However, without the organizational and social structure to apply them and, consequently, the justice system continues to operate only in the field of "should be". (DUARTE, BATISTA, 2014). We have, with law 11.340/2006, through the prohibitive and punitive requirements of "not doing, under penalty of punishment", typical of the penal system, the desired social conducts (must be). However, such rules, as they are not internalized by individuals in society, are not "obeyed", even if a punishment (penalty)is imposed.

There are still many challenges to achieve the historical-cultural change in understanding the treatment of women, in the domestic and intra-family context, as a human being with dignity, with duties and rights, with a will of their own and with dreams.

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