


Gender And Public Policies: Comparative Study Of Laws On Violence Against Women In Brazil And France

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ABSTRACT

This paper aims to analyze the laws and public policies of Brazil and France regarding the

confrontation of gender violence against women, using the qualitative methodology of documentary analysis, especially Law No. 11,340/2006 (Maria da Penha Law) and Law No. 13,104/2015 (Feminicide). And, for comparative study purposes, the collection "Les droits des femmes face aux violences" was prepared by Marlène Schiappa. An approach was made to the Civil Law system and other points of convergence between Brazil and France. The legislation showing the public policies of these countries in this confrontation was analyzed. This research is relevant to promote the understanding of how gender violence against women is treated.

Keywords: Gender, Violence, Comparative Law.

1 INTRODUCTION

The combed article aims to analyze the laws and public policies of Brazil and France about combating gender violence against women.

For this purpose, the qualitative methodology was used through documentary analysis. The documents to be analyzed are Brazilian Laws, in particular, Law No. 11,340/2006 (Maria da Penha Law) and Law No. 13,104/2015 (Feminicide). And the collection "Les droits des femmes face aux violences" by Marlène Schiappa and published by Dalloz Publishing.

We clarify that the study compared Brazil and France because both countries adopt the *Civil Law system*, according to which written legislation is required to safeguard people and discipline socially and legally admitted conduct.

We comment on the emergence of women's law and specifically approached the comparative study to conclude that Brazil has a care network, according to which the victim of violence can seek assistance in the Health and Social and Psychological Assistance (CRAS, CRAM) sectors and also register a police

report in the Specialized Police Station, which may grant protective measures, such as the aggressor's drive-off. Next, the infringer will respond to criminal (punishment) and civil (divorce, pension, property sharing) proceedings.

France has criminal and civil measures against the offender, but there is no network to support the victim of violence, which must use a police report, using the Criminal Code to indicate the conduct of the aggressor, who will suffer the appropriate sanctions or safeguard the civil legislation that provides for the retention of the aggressor's salary with passing on to the victim, payment of rent and other measures.

We also see that Brazil has specific legislation that qualifies homicide when the motive is gender – femicide. Whereas France does not have such a qualifier.

And this comparative study is relevant to promote the understanding of how gender violence against women is treated.

2 METHODOLOGY (OR MATERIALS AND METHODS)

The methodology used is that of qualitative research through documentary analysis. The documents to be analyzed are Brazilian Laws: Law No. 11,340/2006 (Maria da Penha Law) and Law No. 13,104/2015 (Femicide). And the collection "Les droits des femmes face aux violences" by Marlène Schiappa and published by Dalloz Publishing.

3 THEORETICAL REFERENCE

The study developed here has an interdisciplinary view, given that the concept of violence is broad and requires studies and crossings in areas of knowledge that intersect.

From the authors and works read, we share the understanding that gender is a historical-social construction based "on social relations that focuses on the reproductive arena and the set of practices that bring reproductive distinctions on bodies to the body of social processes." (CONNEL AND PEARSE, 2015, p. 48)

The choice of the terminology "gender violence against women" stems from cedaw's understanding (Convention for the Elimination of All Forms of Discrimination against Women) that by explaining that violence results from "being a woman" it is possible to treat this violence as a social and non-individual problem, ensuring visibility.

Moreover, violence itself manifests itself in many ways, as we can observe in the work of Santinon *et ali*, 2014: physical, moral, psychological, symbolic, structural, and institutional violence.

The present research work aims to develop a study that compared the laws and public policies for confronting gender violence against women in Brazil and France. The choice of these countries was because one of the icons of feminism is Simone Beauvoir, who is French, and Brazil for being our homeland. Allied the fact that, in terms of legal model, both countries are adherents of *civil law which* means that it is a

written right, based on Roman law. Laws are the starting point of legal reasoning and from it, the judge will base his decisions. The organization of this Right is through codes.

Discussing the concept of *Civil Law*, as set out above, is influenced by Roman law, both in the territory of continental Europe and in its colonies (GALIO, p. 2).

The Roman-Germanic legal tradition had its origins in the 12th and 13th centuries in the Renaissance of Western Europe since the development of cities and trade required security and an order that would only be achieved by law. (GALIO, p. 2 and 3)

Civil Law with this doctrinal aspect arising from universities, in which Roman law and canon law were studied, brought to Western Law the terminological, conceptual, and legal reasoning itself peculiar and distant from *common law*. (BARREIRO, PARICIO, 2010, p. 185-186)

Thus, we can characterize *Civil Law* as a legal system in which the judge, when deciding, will seek the law to "say the law", which is the starting point for legal reasoning. The organization of laws is done by codes and remains fully disciplined in the Constitution of the Federative Republic of Brazil that: "no one is obliged to do or fail to do anything but under the law" (art. 5, item II). Likewise, in the French Constitution of 1791, Article 3 provides: "there is no authority in France superior to the law".

In light of this system, legislation is required, which must be able to ensure the legal protection of persons.

Another common point for the study developed here is that France, through its Enlightenment philosophers, forged the French ideals of equality, liberty, and fraternity, writing the Declaration of Human Rights, and definitively consecrating *civil law*.

And, in the area of women's law, it is known that, despite the macho character of the Enlightenment and the French Revolution, it is in these movements that Feminism has found its theoretical foundation.

The emergence of women's law dates back to the period of the Industrial Revolution. That's because her birth is a response to the exploitation of a woman's work. (BREGA FILHO and ALVES, 2008, p. 135)

And, in Brazil, Women's Rights culminated, among others, with the edition of the norms – Maria da Penha Law and Femicide, which are the object of this study.

Therefore, for comparative law purposes, Brazilian Laws No. 11,340/2006 (Maria da Penha Law) and Law No. 13,104/2015 (Femicide) will be analyzed. And the collection "Les droits des femmes face aux violences" by Marlène Schiappa and published by Dalloz Publishing.

According to this French work, the historical achievements of these women over the years are: working without the authorization of the husband, voting, choosing contraceptive methods, naming the husband if he so desires, choosing whether to be a mother, marrying another woman, and assisting procreation.

It is possible to agree with the equivalence of such achievements for Brazilian women as well, not least because Brazil was influenced by the French Revolution and enlightenment ideals during this period.

When it comes to confronting gender violence against women, there is no ancestry. Let us see that President Emmanuel Macron, only on 25 November 2017, proclaimed equality between men and women as a national cause. (SCHIAPPA, 2021, p. 2)

In Brazil, anthropologist Miriam Grossi (1994) understands that the concept of "violence against women" results from a historical construction of the feminist movement. This movement in Brazil, in the late 1970s, was unworthy of the justification of the legitimate defense of the honor used in the trials of men who killed women, the result of which was the acquittal or application of the minimum penalty. The first manifestations of the women's movement took place under the slogan "Who loves does not kill", in 1979, on the occasion of the doxa Street trial, which killed his companion Angela Diniz. Thus, in this first moment, violence against women meant murders of women committed by their husbands, companions, or lovers.

France is building, from Macron's proclamation, women's rights. Thus, when dealing with these in public spaces, protection is conferred on women, criminalizing the conduct of harassment in the streets, which was called "outrage

sexist and sexual." Criminal conduct is typified when the aggressor utters "comments and behaviors that affect and affect the dignity of the person" on the grounds of "degrading or humiliating" character or that create "intimidating, hostile or offensive" situations, the penalty of which is €750.00. (French Penal Code, art. 222 cited by SCHIAPPA, 2021, p, 29)

In Brazil, Law No. 13,718/2018 inserted the letter "A" into Art. 215, legally defining sexual harassment as the practice of a libidinous act against someone without their heinous "to satisfy their lasciviousness or that of a third party", whose penalty is 1 to 5 years.

Among women's rights in public spaces, France criminalizes *cyber harassment and revenge porn*, which are not typified in Brazil.

There is, in France, the right of women to violence and sexual violence, treating sexual display and sexual harassment as a crime, based on the Istanbul Convention. Brazil predicted in its Penal Code, the conduct of sexual harassment (CP, art. 216-A), sexual violence through fraud (CP, art. 215), and public outrage at modesty (CP, arts. 23-234), with sentences ranging from 06 months to 02 years of detention.

In the sphere of women's rights in their conjugal relations, France understands that marital violence occurs in relationships between married people, in a stable union, and boyfriends (heterosexual or homosexual), whether these relationships are current or already terminated.

In Brazil, the Maria da Penha Law, which guided *advocacy* in favor of the cause of women, stems from more than 30 years of feminist movements and influenced the formulation and implementation of public policies to combat gender violence against women. (BARSTED, c2022, p.14)

And following the feminist struggles, we have rated into Law No. 13,104/2015 or Femicide Law, which introduced the qualifier for homicide resulting from the condition of

as well as when it involves domestic and family violence or contempt or discrimination against the condition of a woman.

Whereas France does not have specific legislation dealing with femicide.

Another aspect that draws attention in this comparative study is that, in France, it is possible to trigger associations to fight violence and sexual violence to be authors in cases of denunciation of aggressors. And, many protective solutions are conferred by the Civil Code (art. 515-11-1). Thus, as in Brazil, there are some protective measures in France. Highlighting the "bracelet" which, like an electronic anklet, keeps the aggressor away from the victim. France brings measures of separation of bodies and payment of rent for women and their children, while Brazil has, in some cities, shelter homes.

France, on women's rights in the face of violence at work and economic violence, has the possibility of unlocking the savings of its employees who are accused of violence. In Brazil, this possibility is being processed in the National Congress.

France, when dealing with genital mutilation, understands that French law is superior to all customs and therefore should be applied, ensuring that girls and women are not mutilated on its territory.

Brazil, as a signatory to the UN, advocates the protection of girls and women against genital mutilation. However, recently, in the current administration, there has been a setback, because terms that can induce gender ideology are avoided¹.

4 RESULTS AND DISCUSSION

When analyzing the Brazilian legislation comparing it to the French one, we can observe that they use *the Civil Law system*, which requires written legislation disciplining the conducts that are included as the violence of genesis against women, as well as determining the mechanisms of protection of the victim. The differential is that Brazil has a coping network, according to which the victim of violence can seek assistance in the Health and Social and Psychological Assistance (CRAS, CRAM) sectors and also register a police report in the Specialized Police Station, which can grant protective measures, such as the extraction of the aggressor. Next, the infringer will respond to criminal (punishment) and civil (divorce, pension, property sharing) proceedings.

France has criminal and civil measures against the offender, but there is no network to support the victim of violence, which must use a police report, using the Criminal Code to indicate the conduct of the aggressor, who will suffer the appropriate sanctions or safeguard the civil legislation that provides for the retention of the aggressor's salary with passing on to the victim, payment of rent and other measures.

¹ Here the term is used as a reproduction of the meaning that the bolsonaristas (followers of the President of Brazil, Jair Messias Bolsonaro – management 2018-2022), give, that is, a negative connotation, as if when addressing the subject would be an "indoctrination" of children. Whereas, when referring to "gender ideology", it is intended to summarize the according to which the duo recognizes itself in the world, beyond the masculine or feminine – historical-cultural constructions – signifying a spectrum of possibilities and identities.

It was also found that Brazil has specific legislation that qualifies homicide when the motive is gender – femicide. Whereas France does not have such a qualifier.

5 FINAL CONSIDERATIONS

The work allowed analyzing *the Civil Law system*, which is a system used by Brazil and France, according to which the existence of law must indicate the legal assets protected, as well as what is considered an infringement, which sanctions, characterizing victim and aggressor.

A comparison was made between Brazilian and French legislation regarding the confrontation of gender violence against women to verify that Brazil has a victim protection network, while France can rely only on civil or criminal law. It was found that France has no law on femicide.

We believe that the comparative study is relevant to promote the understanding of how gender violence against women is treated.

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