

**TEORIA FEMINISTA DO DIREITO, SEUS MÉTODOS E A IMPORTÂNCIA DA
PERSPECTIVA DE GÊNERO NO CAMPO JURÍDICO**

*FEMINIST THEORY OF LAW, ITS METHODS AND THE IMPORTANCE OF THE PERSPECTIVE OF GENDER
IN THE LEGAL FIELD*

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RESUMO

O presente artigo discorre sobre onze métodos jurídicos feministas, desde as lições trazidas pela autora portuguesa Rita Mota Sousa, com aplicações a partir da realidade do nosso País. Eles devem ser levados em consideração no momento de se elaborar, interpretar, aplicar e executar normas jurídicas que digam respeito, de forma direta ou indireta, à condição feminina, para que se possa garantir a efetivação dos direitos das mulheres já conquistados, bem como ampliá-los, a fim de atingir aqueles que ainda não foram jurisdicionalizados. É por meio de uma perspectiva de gênero aplicada ao direito que se poderão alcançar tais objetivos.

Palavras-Chave: Teoria Feminista do Direito. Teoria Jurídica Feminista. Métodos Jurídicos Feministas. Direitos das Mulheres. Perspectiva de Gênero.

ABSTRACT

This article discusses 11 feminist legal methods, starting from the lessons brought by the Portuguese author Rita Mota Sousa, with applications from the reality of our country. They must be taken into account when elaborating, interpreting, applying and implementing legal norms that concern, directly or indirectly, the female condition, so that the rights of women already conquered can be ensured, as well as to expand them, in order to reach those who have not yet been judicialized. It is through a gender perspective applied to the law that these objectives can be achieved.

Keywords: Feminist Theory of Law. Feminist Legal Theory. Feminist Legal Methods. Women's Rights. Gender Perspective.

I INTRODUCTION

Studies that contemplate the Feminist Theory of Law (FFT), also known as Feminist Legal Theory¹, are still very incipient in Brazil, but they are already bringing important repercussion and mainly impacting the way and manner of elaborating, interpreting, applying, and executing legal norms in cases involving women's rights, from a gender perspective.

The most complete and important legislative document elaborated from a gender perspective is represented by the Maria da Penha Law (Law nº 11.340, of 2006). It is considered by the United Nations Development Fund for Women one of the three most advanced specific legislations on the subject in the world. The most recent production, in turn, is the Protocol for Judging with a Gender Perspective, elaborated by the National Council of Justice (CNJ) and published in December of 2021 (CNJ, 2021).

The importance of the gender perspective in the legal field (when drafting laws, interpreting, applying and enforcing them) stems from the maturation and expansion of women's way of seeing and experiencing things, the so-called feminist consciousness, which, according to Rita Moura Sousa, "consists of the creation of knowledge through the narrative and systematic analysis of shared experiences" and constitute "experiences that, despite being initially experienced by women as individual sufferings, come to be understood as collective experiences of oppression" (2015, p. 63). When this feminist consciousness is brought to the legal field, we find the basis of Feminist Legal Theory.

The primary objective of TFD is to change the mentality of legal actors, law makers and executors, so that the gender perspective is considered at all levels of involvement and action, always realizing that despite being a source of justice, the law, if not handled well, can also be a source of oppression. Here, all care is not enough, for as Rita Mota Sousa well warns, "the law is a discourse of authority, with a particular capacity to create meanings, reinforcing certain worldviews and able to definitely shape collective thinking" (SOUSA, 2015, p. 59).

It is important to understand that "applying a feminist perspective to legal norms means interpreting and understanding them in light of women's experiences and interests" (SOUSA, 2015, p. 62), which makes all the difference. For this, Rita Mota Sousa created some feminist legal methods. It is of them that we will talk about next.

2 FEMINIST LEGAL METHODS

Rita Mota Sousa makes an important contribution to the debate on feminist legal theory by proposing the use of eleven special and specific methods: feminist legal methods. They are of fundamental importance for the realization of substantial equality between men and women.

The possibilities presented by feminist legal methods dislocate law from its androcentric movement and rebalance it, offering different centralities and concrete proposals for the correction of its patriarchal bias, where it exists. In this way, the conditions are created for the flourishing of a whole new legal culture centered on the idea of substantive justice, less formal, as well as for the dissemination of feminist theories of law where they are most relevant: in the reality of life" (SOUSA, 2015, p. 56).

¹ São várias as divisões das teorias feministas do direito em fases ou correntes. O presente estudo, no entanto, não se ocupará do tema, pois o que aqui importa é saber que existe uma unidade de propósito, que, como menciona SANTOS (2015, p. 296), é o "de estudar, de modo crítico, a relação entre o Direito e a posição social subordinada ocupada pelos sujeitos de direito em razão do sexo/gênero."

By applying the methods, it would be possible, for example, to avoid the embarrassing, violent and insensitive situation of the legal actors who starred in the scene described below. The dialog that will be transcribed took place during the hearing of the victim in 2018 (CNJ/IPEA, 2019):

“O que acontecia para ele fazer isso?”, pergunta um promotor a uma mulher vítima de violência doméstica. “Ele é muito machista”, ela responde. “Tu dava motivo?”, questiona o advogado do agressor. “Não”, diz ela.

“Tu tinha outro caso conjugal?”, insiste o advogado. “Não, como eu teria se ele nem me deixava sair de casa?”

“Temos que cuidar quem colocamos para dentro de casa”, emenda o juiz.

The dialogues clearly show gender stereotypes, blaming of women and the absence of the lawyer of the victim, as well as, of course, the institutional violence to which she was subjected. It is also noteworthy that the victim indicates the possibility of another crime (which was not the subject of the case): private imprisonment. However, she had not been asked about this situation, demonstrating how violence against women is naturalized, even by the justice system.

The methods are as follows:

1. Feminist awareness
 2. Awareness that the personal is political
 3. Traditional methods contribute to maintaining the status quo and existing power imbalances
 4. Sharing experiences allows experiences seen as personal failings to be understood as collective experiences of oppression.
 5. It is through the sharing of narratives that certain traumatic and oppressive experiences that were hitherto perceived as natural are brought to light
 6. Enable women to operate and find their place within the androcentric discourse of the law
 7. Teaching feminist theories in universities and legal training schools.
 8. Awareness that no form of subordination stands alone; we are all reciprocally affected by the oppression of others.
 9. Always ask the woman question
 10. Constantly question practices or rules
 11. Feminist practical thinking
- Let's take a look at each of them:

2.1 Feminist awareness

The method of feminist awareness is based on and permeates all the others. For Rita Mota Sousa, "it is not possible to understand the urgency of a new perspective without awareness of the reality of social inequality that affects women, the power dynamics that produce inequality and the ways, usually shared, in which this inequality is empirically lived. Awareness is doubly assumed as a PRACTICE and as a METHOD, because [...] it is essentially a way of knowing, a way of apprehending the social reality of what it is to be a woman, the roles, characteristics, ways of being and proceeding, the identities that have been attributed to them and the irrationality of attempts to fit into this unnatural world, designed to measure by others as if it were the natural order of things" (SOUSA, 2015, p. 62-3).

That is why, based on feminist awareness, we must seek a society in which the rules of behavior are produced from elements of our own, which break with inherited customs whose attribution of meaning is no longer consistent with the present. To this end, it is necessary to move forward: to understand the ways in which sexual asymmetry is processed and reproduced in

concrete historical societies. This is, in this understanding, an important factor in overcoming what happens. Since the difference in treatment between the sexes is a social construction, it can be perfectly modified by implementing a new way of thinking, with other values being disseminated and recognized by competent proselytism, that is, taking into account feminist awareness.

It is this new way of thinking that will lead to important and urgent constructions and/or changes in the condition of women, both in relation to their public and private lives.

2.2 Awareness that the staff are political

The realization that every day, non-public practices and problems have a political dimension is very important. Some examples:

. **the relationship between pregnancy, puerperium and breastfeeding with work**, even if pregnancy, puerperium and breastfeeding have a personal conception, the consequences for working women have a political dimension because it requires different treatment due to the equally distinct situation. This is, for example, what Law No. 14,457 of 2022, which provides, among other rights, for flexible working hours, a right to be exercised by employees who have a child, stepchild or person under their care up to 6 years of age or with a disability, deals with². The extension of the right to employees represents an evolution in relation to the idea that attributes only to the woman (mother) the tasks of care and education of children and contributes to reduce the absurd numbers that will be brought below.

. **the gratuity of domestic work**: research carried out by the Longitudinal Study of Adult Health (ELSA-BRASIL, 2022), during the pandemic period, shows that women performed, on average, four hours more domestic work per week than men. The impacts of this brutal difference are felt directly in women's remuneration, since, among other consequences, their time for paid activities is less, as well as their availability to work overtime and to dedicate themselves to professional and qualification courses at work. Another survey (REDE NOSSA SÃO PAULO/IPEC, 2022) shows a regression in the perception of the division of tasks within the home. And this new look emerged, especially during the pandemic, when people were forced to stay at home longer.

According to the study, 14% of respondents (45% men and 55% women) stated that housework is the sole responsibility of women. An increasing number if we consider the last two years, whose perception was 9% in 2021 and 7% in 2020. Making a gender cut, we observe that women perceive more than men that responsibilities are exclusively theirs. The statement is true for 16% of women and 10% of men. The group that believes that domestic chores are equally divided between men and women in households is larger, but also showed a decline of ten percentage points: 37% of respondents think that these tasks are divided equally between men and women. From a gender perspective, 47% of men have this view, while only 29% of women have the same perception. In this group, despite the expectation of equality, 34% point out that women end up assuming most of the domestic activities (in 2021, they were 28%).

2 Lei nº 14.457, de 2022. Art. 8º. No âmbito dos poderes diretivo e gerencial dos empregadores, e considerada a vontade expressa dos empregados e das empregadas, haverá priorização na concessão de uma ou mais das seguintes medidas de flexibilização da jornada de trabalho aos empregados e às empregadas que tenham filho, enteado ou pessoa sob sua guarda com até 6 (seis) anos de idade ou com deficiência, com vistas a promover a conciliação entre o trabalho e a parentalidade: [...]

V - horários de entrada e de saída flexíveis.

Art. 14. Quando a atividade permitir, os horários fixos da jornada de trabalho poderão ser flexibilizados ao empregado ou à empregada que se enquadre nos critérios estabelecidos no caput do art. 8º desta Lei.

Parágrafo único. A flexibilização de que trata o caput deste artigo ocorrerá em intervalo de horário previamente estabelecido, considerados os limites inicial e final de horário de trabalho diário.

. **sexual harassment:** although sexual harassment is a crime directed at a concrete (personal) victim, when practiced in the workplace it has consequences beyond the individual, since it impairs the ability of the woman to be productive (the overwhelming majority of victims are female), if not causing her to resign or transfer her job. The understanding of the scale of the problem led to Law No. 14,457 of 2022 even changing the competencies of the Internal Commission for Accident Prevention (CIPA), now including concern about sexual harassment.³

. **gender-based violence:** domestic and family violence against women is a structural phenomenon (EXPÓSITO & RUIZ: 2015, p. 222), since it stems from inequality (not only economic, but also in relation to the valuation of the roles that each gender plays in society) between men and women and uses this unjust condition to keep them in a situation of inferiority. It is a phenomenon that feeds back on itself, because, due to the unequal distribution of social roles that each gender is given to play, participation of women in various aspects of life (professional, personal, family, social) remains diminished, further inhibiting their capacities and creating insecurity for them. This leads to even more adverse effects, which contribute to keeping them in their inferior situation (undermining their confidence, limiting their rights and opportunities, overburdening them with responsibilities related to the cleaning and organization of the home, food, basic care of family members and other dependents, etc.). It is important to note that "this is not an isolated phenomenon or characteristic of certain relationships, but linked to the basic norms of society and models of behavior assigned to each gender", and women are not given to fail in their social and family roles. They are expected to be selfless, capable of giving of themselves to others, socially supportive, multitasking, etc.

All the issues mentioned above, therefore, have a political dimension because, although personal, "they are consequences of patriarchal social dynamics that cannot be reinforced, protected or ignored by the community and the State". The State needs to take a stand against them, seeking actions, plans, strategies to address them with a view to annihilating them or, at worst, reducing them.

2.3 Traditional methods contribute to the maintenance of the status quo and existing power imbalances (Rita Mota Sousa, 2015, p. 63).

If the harmful consequences of patriarchal dynamics for women were not enough, the fact that the use of traditional methods reinforces the existing imbalances between the sexes must be denounced. This is due to the fact that traditional methods value the more formal aspect of the law and fail to achieve the goal of substantive justice.

A harmful and objective consequence is that, in the last 15 years, Brazil has fallen 26 places in the global gender equality ranking, from 67th to 93rd position. For Francisca Expósito and Sergio Ruiz,

³ Lei nº 14.457, de 2022

Art. 23. Para a promoção de um ambiente laboral sadio, seguro e que favoreça a inserção e a manutenção de mulheres no mercado de trabalho, as empresas com Comissão Interna de Prevenção de Acidentes e de Assédio (CIPA) deverão adotar as seguintes medidas, além de outras que entenderem necessárias, com vistas à prevenção e ao combate ao assédio sexual e às demais formas de violência no âmbito do trabalho: [...]

Art. 32. A Consolidação das Leis do Trabalho, aprovada pelo Decreto-Lei nº 5.452, de 1º de maio de 1943, passa a vigorar com as seguintes alterações:

“Art. 163. Será obrigatória a constituição de Comissão Interna de Prevenção de Acidentes e de Assédio (Cipa), em conformidade com instruções expedidas pelo Ministério do Trabalho e Previdência, nos estabelecimentos ou nos locais de obra nelas especificadas.

existe relação entre violência e crenças culturais que considera as mulheres inferiores. Essa ideologia considera legítimo impor a autoridade às mulheres, usando a força se for necessário (força e agressividade), que os homens exercem se sua masculinidade se mostra ameaçada. A violência de gênero não é um fim em si mesma, mas instrumento de dominação e controle. O homem que usa a violência não almeja livrar-se da mulher (em geral), mas, sim, manter os laços que a sujeita. (EXPÓSITO & RUIZ: 2015, p. 223)

It is important to realize that "the imbalance of power is a determining factor in the generation of violence" (ESCOBAR CIRUJANO; QUINTEROS; SÁNCHEZ GAMONAL; TANDÓN RECIO: 2011, p. 41). This is because "there would be no problem if the male and female characteristics that have been highlighted throughout history had not led to inequality, misogyny or violence against women" (ESCOBAR CIRUJANO; QUINTEROS; SÁNCHEZ GAMONAL; TANDÓN RECIO: 2011, p. 41).

However, as long as men are considered superior to women "and domination and aggressiveness are valued in that regard, as long as submission and humility are considered typically feminine characteristics, women will be more vulnerable and violence against them will continue to be considered as an affirmation of male power and control" (MATUD: 2015, p. 205).

In reverse, the recognition of women as equals, the rejection of patriarchal demands (which give men the status of dominant and aggressive beings) will liberate society (MATUD: 2015, p. 205).

The perception of the perverse findings of gender-based violence is brought in a very didactic way in the UN/CEDAW General Recommendation 35/2017 (violence against women). Check it:

10. [...] a violência de gênero contra as mulheres é um dos meios sociais, políticos e econômicos fundamentais pelos quais a posição subordinada das mulheres em relação aos homens e seus papéis estereotipados são perpetuados. [...] essa violência é um obstáculo crítico para alcançar a igualdade substantiva entre mulheres e homens, assim como para o gozo pelas mulheres dos direitos humanos e das liberdades fundamentais consagrados na Convenção.

2.4 The sharing of experiences allows experiences regarded as personal failures to be understood as collective experiences of oppression (SOUSA, 2015, p. 63).

The acquisition of feminist consciousness "is made possible by the incorporation of reported experiences and the identification of individual experience with the experience of others, therefore, by the creation of knowledge through the narrative and systematic analysis of shared experiences. This allows experiences seen as personal and individually suffered failures to be understood as collective experiences of oppression" (SOUSA, 2015, p. 63).

By incorporating the experiences reported (personal narrative), women are empowered individually and collectively, because personal stories are valued. In addition, it is easier to perceive risks, vulnerabilities and propose preventive actions based on the reality experienced by women.

A good example of the above occurred in 1963, when the American Betty Friedan released the book "The feminine mystique", bringing a fantastic experience, from the answers of women to a questionnaire that the author elaborated⁴. Listening to women who followed the precepts of the 1940s and 1950s (when the activities of women were basically restricted to acting as housewives),

4 Foram feitas entrevistas com colegas de turma de Smith, quinze anos após a formatura. Duzentas mulheres responderam ao questionário. O livro está disponível em PDF no seguinte endereço: https://catarinas.info/wp-content/uploads/2016/07/Mistica_feminina.pdf

she noticed a phenomenon that women imagined to be theirs alone, but which, in fact, was occurring in the lives of almost everyone.

A ideia central do livro está na observação de que a mulher foi mistificada após a Crise de 1929 e mobilização para a Segunda Guerra Mundial, sendo considerada fundamentalmente como mãe e esposa zelosa. Assim, a educação da menina desde a infância não a estimulava a ser independente, mas a desenvolver habilidades apenas para se casar e viver em função dos filhos e do marido. Com o passar dos anos, a mulher se sentia frustrada e desenvolvia diversos distúrbios psicológicos que oscilavam da depressão ao consumismo. Como no período pós-Segunda Guerra foi também a solidificação do progresso estadunidense e do "american way of life", foi possível concluir que a frustração feminina de apenas viver para os outros era canalizada para aumentar o consumo desse período. Dessa forma, as desigualdades de tratamento entre mulheres e homens eram usadas para justificar uma obrigatória dedicação ao lar que era compensada pelo estímulo à economia da época através do incremento das frustrações e opressão femininas no âmbito doméstico. (Wikipedia, verbete "A Mística Feminina")

The following excerpts from Chapter I ("The Problem with No Name") of her book illustrate very well the phenomenon that affected a large proportion of American women at the time:

Se surgisse uma crise nas décadas de 50 e 60, a mulher sabia que havia algo de errado em seu casamento ou nela própria. Outras viviam satisfeitas com a sua vida, segundo pensava. Que espécie de criatura seria ela que não sentia essa misteriosa realização ao encerrar o chão da cozinha? Envergonhava-se de tal modo de confessar sua insatisfação que jamais chegava a saber que outras também a experimentavam. Se tentasse explicar ao marido ele não entenderia, pois nem ela própria se compreendia. Durante mais de quinze anos a mulher americana achou mais difícil falar sobre este assunto que sobre sexo. Mesmo os psicanalistas não sabiam que nome lhe dar. Quando uma mulher corria para eles, em busca de ajuda, conforme faziam muitas, dizia: 'Estou tão envergonhada; Devo ser totalmente neurótica.' (FRIEDAN, 1971, p. 20-1)

Aos poucos fui percebendo que o problema sem nome era partilhado por inúmeras mulheres do país inteiro. [...] As palavras hesitantes que ouvi em tardes tranquilas, quando as crianças estavam na escola, ou em noites em que os maridos faziam serão, creio que as compreendi primeiro como mulher, muito antes de perceber suas amplas implicações sociais e psicológicas. (FRIEDAN, 1971, p. 21)

Qual era exatamente esse problema sem nome? Quais as palavras usadas pelas mulheres ao tentar descrevê-lo? Às vezes diziam: 'Estou me sentindo vazia... incompleta' Ou então: 'Tenho a impressão de não existir'. As vezes apagavam a sensação com um tranquilizante, julgavam que o problema relacionava-se com o marido ou os filhos. Ou então que precisavam redecorar a casa, mudar-se para um bairro mais agradável, ter um caso com alguém, ou mais um filho. De quando em quando, consultavam um médico, apresentando sintomas que assim descreviam: 'Sinto-me cansada... Zango-me tanto com as crianças que chego a me assustar... Tenho vontade de chorar sem motivos. (FRIEDAN, 1971, p. 21-2)

O problema era afastado dizendo-se à dona de casa que ela devia compreender o quanto era feliz: dona de si mesma, sem horários, sem competição. Caso contrário, acharia que os homens podem ser felizes neste mundo? Desejariam secretamente ser homem? Ignoraria o quanto vale ser mulher? (FRIEDAN, 1971, p. 24)

O problema foi também afastado com um encolher de ombros e as frases: 'Não há solução. Faz parte da condição feminina. Que é que há com a mulher americana? Será que não sabe aceitar graciosamente seu papel?' (FRIEDAN, 1971, p. 24)

É fácil descobrir os detalhes concretos que aprisionam a dona de casa, as oníscas exigências feitas ao seu tempo. Mas as cadeias que a prendem existem somente em seu espírito. São feitas de ideias errôneas e fatos mal interpretados, verdades incompletas e escolhas irrealistas. Não são fáceis de perceber, nem fáceis de romper. (FRIEDAN, 1971, p. 30)

Quero algo mais que meu marido, meus filhos e minha casa. (FRIEDAN, 1971, p. 31)

As Rose Marie Muraro makes clear in the preface to the Brazilian edition, with this book "American women began to become aware of the manipulation of which they had been victims. And she began to react" (1971, p. 10). This reaction, inspired and driven by the content of the book, gave rise to the second wave of feminism⁵.

2.5 It is through the sharing of narratives that certain traumatic and oppressing experiences that were therefore understood as natural are evidenced (Sousa, 2015, p. 64).

Personal experience becomes an important element of analysis as it is "systematized and elevated to theory, and theory, in turn, returned to life, transforms the reading and understanding of personal experiences. [In turn,] the dialectic between individual experience and theory reveals the social dimension of individual experience and the individual dimension of social experience and, therefore, the political nature of personal experience" (Rita Mota Sousa, 2015, p. 64).

This is what a major survey conducted in 2013 shows about women's reaction when they are catcalled on the street. "Every day, women are forced to deal with obscene comments, looks, intimidation, unwanted touches and related sexual harassment that come in various forms and are understood by common sense as compliments, jokes or immutable characteristics of life in society (the famous "that's just the way it is...") when, in fact, none of this is normal or acceptable". The "Enough of Fiu Fiu" campaign was launched by Think Olga. "Initially, illustrations were published with messages of repudiation of this type of violence. The images were shared by thousands of people on social networks, generating such a positive response that it ended up being the beginning of a great social movement against harassment in public places", with massive support from women to the campaign.

To bring the perspective of women on the subject, the journalist Karin Hueck prepared an online study, launched by Think Olga to closely investigate the opinion of women in relation to street harassment. Among the results brought, the following data stand out: 83% of the protesters did not think it was cool to receive street harassment, 90% had already changed clothes before leaving home thinking about where they were going because of harassment and 81% had already stopped doing something (going somewhere, passing in front of a construction site, walking) for this reason⁶.

A few years later, in 2018, through intense mobilizations led mainly by feminist women, harassment in public transport was given more visibility, with numerous and important campaigns on the subject, giving rise to the amendment of the Penal Code, for the inclusion of the crime of sexual harassment - art. 215-A -, brought by Law No. 13,718 of 2018.⁷

5 O PDF do livro pode ser encontrado em: <https://catarinass.info/livros/mistica-feminina-betty-friedan-1963/>

6 Veja a pesquisa completa: <https://olga-project.herokuapp.com/2013/09/09/chega-de-fiu-fiu-resultado-da-pesquisa/>

7 Código Penal

Importunação sexual (Incluído pela Lei nº 13.718, de 2018)

As shown by the research on *Perceptions on control, harassment and domestic violence: experiences and practices*, carried out in 2022 by Ipec and the Patrícia Galvão Institute, with a support from Uber⁸, there is a dissonance between what men understand as violence in the public environment and the experiences of women. One of the data of the survey elucidates this point well: while 45% of women have had their bodies touched without consent in a public place, only 5% of men admit to this practice. In addition, four out of ten women have experienced sexual harassment, but few men admit to being perpetrators of invasive practices, harassment and sexual abuse.

2.6. Permit the woman to operate and find her place within the androcentric discourse of the law (SOUSA, 2015, p. 64).

Feminist consciousness is fundamental for the elimination of false consciousness, that which is founded on prejudices and stereotypes that, because they are so rooted and ingrained, end up passing as truths. Moreover, as Rosa Luxemburg reminds us: "Those who do not move do not feel the chains that bind them".

Such a perspective was very important when the entire Title dealing with crimes against sexual dignity was reformed in Brazil. In fact, according to the current Penal Code (which has been in force since 1940), the very nomenclature of the Title showed how much the legislation was concerned with and concerned about the issue merely for the protection of patriarchy.

The seriousness of the practice of sexual crimes against males is not disregarded, but what stands out most in Brazilian legislation is that the classification of sexual crimes, until very recently, was basically protective of legal assets directly related to a certain model of moral and sexual conduct that, without consulting them, was expected of women. For this reason, it is relevant to address the intersections between sexual crimes, the rights of women and feminist awareness.

The modern understanding of sexual offenses, which only came to light when women participated more actively in their construction, is that such rules of conduct attack the free exercise of sexual rights, both of men and women, violating a relevant dimension of the dignity of the person, which is the free power of decision over their body, their interests and desires, with regard to relationships of a sexual nature.

Going through all the national legal provisions regarding sexual crimes, from the Penal Code of 1830 to the present, one comes to the conclusion that there has been a significant (and very slow) advance in relation to the primary criminalization of conducts that offend sexual dignity, although some points still remain to be improved.

A clear shortage is represented by secondary victimization, due to the lack of assistance to women victims of sexual crimes who become pregnant. Few health institutions receive women who are pregnant as a result of sexual crime. Moreover, many victims are unaware of their sexual and reproductive rights. This is demonstrated by the research on *Perceptions of the right to abortion in case of rape*, carried out by the Patrícia Galvão Institute in partnership with the "Locomotiva" Institute in 2022.⁹:

Art. 215-A. Praticar contra alguém e sem a sua anuência ato libidinoso com o objetivo de satisfazer a própria lascívia ou a de terceiro: (Incluído pela Lei nº 13.718, de 2018)

⁸ Disponível em: https://agenciapatriciagalvao.org.br/wp-content/uploads/2022/09/2022_IPG_Ipec_Pesquisa-Percepcoes-sobre-controle-assedio-e-violenci-domestica-vivencis-e-praticas.pdf. Foram entrevistadas por telefone 1.200 pessoas (800 homens e 400 mulheres), com 16 anos ou mais, entre 21 de julho e 1º de agosto de 2022. A margem de erro é de 3 pontos percentuais.

⁹ Foram entrevistadas 2 mil pessoas com 16 anos ou mais de idade, entre 27 de janeiro e 4 de fevereiro de 2022, pela Internet. A pesquisa está disponível no endereço: <https://agenciapatriciagalvao.org.br/wp->

- of women who reported having been victims of rape, 81% did not seek any support services;
- if they experienced rape, 67% of the women interviewed would first go to the police and 26% would first seek a health service;
- 51% do not know the law that guarantees health care to rape victims without the need to file a police report;
- 64% know that the victim of rape can terminate the pregnancy legally and safely, but only 46% know that a police report is not required;

The good news is that 92% of the population agree that every rape victim who seeks a police station or health service should be informed about what can be done to avoid STDs and pregnancy.

And in the final considerations of the survey it was found that

É preciso informar a população, e sobretudo as mulheres, sobre seus direitos e requisitos necessários ou não em caso de estupro. Só assim as vítimas poderão acessar amplamente os serviços disponíveis. Isso é importante sobretudo em uma situação em que a maior parte dos estupros ocorrem por pessoas do círculo social das mulheres e grande parte não sabe que o acesso a serviços de saúde não implica em denúncia do agressor (fato que pode ser decidido depois, inclusive com apoio psicológico para a vítima).

In addition to the need to improve information about sexual and reproductive rights of women, another problem must be denounced: the scarcity of institutions accredited to perform legal abortions, with organized services, a team of psychologists, doctors, social workers and nurses. For obstetrician Jefferson Drezett, who implemented and headed main legal abortion service of Brazil for more than 25 years, at the Pérola Byington Hospital in the city of São Paulo, "care in the selection and training of professionals who will work in these services is important so that there is no prejudice in the team" (PORTAL CATARINAS, 2022).

A study published in the Latin American Journal of Nursing, carried out in a reference hospital in the State of São Paulo with people who sought legal abortion after being victims of sexual violence, provided important information to understand the needs and difficulties faced by these women. (SANTOS; FONSECA, 2022).

2.7 Teaching feminist theories in universities and legal training schools

Among so many commendable and important initiatives in legal courses, we highlight the creation of the discipline "Law, Gender and Equality: the various forms of discrimination and violence", at PUC/SP, taught by professors Sílvia Pimentel and Monica Melo, whose objectives are described as follows

Objetivos

MÓDULO I

Estereótipos, preconceitos e discriminação de gênero estão presentes na nossa cultura e profundamente inculcados nas (in)consciências dos indivíduos; são, portanto, absorvidos também pelos operadores do Direito e refletidos em sua práxis jurídica.

Por essa razão, o objetivo da disciplina é incorporar a perspectiva de gênero ao ensino universitário jurídico e à formação dos futuros profissionais do direito, bem como às e aos estudantes de toda a Universidade, através de uma abordagem crítica e

multidisciplinar. Pretende-se, assim, oferecer aos (às) estudantes ferramentas capazes de estimular a reflexão acerca da desigualdade de gênero em nossa sociedade, a relação deste fenômeno com o direito, e, ainda, as possibilidades de intervenção prática na realidade. Serão consideradas as mulheres e meninas enquanto sujeitos de direito, em sua diversidade: pobres, negras, indígenas, do campo, sem-terra, sem moradia, migrantes, refugiadas, encarceradas, mulheres com deficiência, lésbicas, bissexuais, transexuais e pessoas intersex.

Para tanto, o tema será estudado sob as diversas vertentes do Direito, de forma interconectada com os campos da filosofia, história, antropologia, sociologia, literatura e outros.

Neste primeiro semestre, objetiva-se apresentar um panorama acerca dos direitos das mulheres e meninas, tanto na abordagem da academia, do Sistema de Justiça, da mídia, quanto do ativismo feminista e problematizar a trajetória de conquistas jurídicas, políticas, sociais e culturais das mulheres e meninas ao longo das últimas décadas.

A estrutura do curso foi montada a partir do verbete “Gênero e Direito”, publicado originalmente na Enciclopédia Jurídica da PUC/SP. Assim, apresentados alguns conceitos básicos para a compreensão do tema – tais como “gênero”, “interseccionalidade”, “discriminação e violência de gênero”, “direitos humanos”, “desigualdade”, “patriarcado” –, pretende-se abordar a questão da discriminação e da violência de gênero, em sua complexidade, ou seja, a partir dos sujeitos, dos espaços, das formas como se manifesta, das medidas atualmente previstas, e das que poderão ser construídas, para combatê-la.

MÓDULO II

Objetivos: O objetivo do Módulo II da disciplina é, além de aprofundar conceitos básicos trabalhados no Módulo I, tais como direitos humanos das mulheres, discriminação e violência de gênero, desigualdade e patriarcado, também desenvolver a problemática do acesso à justiça e trabalhar com as áreas do direito constitucional, direito do trabalho e previdenciário, e do direito penal e processual penal. Como tratado no primeiro semestre, “estereótipos, preconceitos e discriminações de gênero estão presentes na nossa cultura e profundamente inculcados nas (in)consciências dos indivíduos; são, portanto, absorvidos também pelos operadores do Direito e refletidos em sua práxis jurídica”. Por essa razão, o objetivo da disciplina é prosseguir na incorporação da perspectiva de gênero ao ensino universitário jurídico e à formação dos futuros profissionais do direito, através de uma abordagem crítica e multidisciplinar. O tema será estudado sob as vertentes do direito internacional (a Convenção CEDAW), e do direito nacional: direito constitucional, direito do trabalho e previdenciário, e direito penal e processual penal. Pretende-se, assim, oferecer aos (às) estudantes ferramentas capazes de estimular a reflexão acerca da desigualdade de gênero, a relação deste fenômeno com o direito, e, ainda, as possibilidades de intervenção prática na realidade. Serão consideradas as mulheres enquanto sujeitos de direito, em sua diversidade: pobres, negras, indígenas, do campo, sem-terra, sem moradia, migrantes, refugiadas, encarceradas, mulheres com deficiência, lésbicas, bissexuais, transexuais e pessoas intersex.¹⁰

The first of the teachers mentioned above mentions her experience in teaching this subject:

Nas aulas semanais, há a participação de alunos e de alunas. Tenho a alegria de estar cercada de pessoas jovens, interessadas pelas questões das mulheres na perspectiva de gênero. Vislumbro, nos olhares das/os integrantes da classe, cumplicidades, dúvidas,

¹⁰ A emenda da disciplina (junto com outras informações) pode ser consultada em: <https://www.pucsp.br/sites/default/files/download/graduacao/optativas-2019/ementas-noturno/opt-2sem2019-noturno-direito-genero-igualdade.pdf> Acesso em: 15.8.2022.

perplexidades, sofrimentos... Vale ressaltar que, aproveitando os desenvolvimentos teóricos do conceito de gênero, incluímos em nossas buscas e reflexões os temas LGBTIQ, pois nosso compromisso é com a igualdade, a inclusão social e a democracia.

From the report, it is observed how much knowledge enriches the experience and can be a springboard for change, first in the own existence of the students and then even in their closest relationships, and finally, when exercising their future legal profession, it can lead to changing the lives of the people who come to be served (whether in police careers, in the Advocacy, in the Magistracy, as part of the State Prosecution Office, the Public Defender's Office, etc.), thus contributing to making the world a fairer and more equal place.

In 2020, the Faculty of Law of USP created the discipline Law and Gender Equity, with Ana Elisa Bechara, Nina Ranieri, Susana H. da Costa and Sheila N. Cerezetti as responsible professors, with the aim of ¹¹:

construir conhecimento sobre os processos de exclusão e discriminação das mulheres em sociedade, levando-se em consideração o fato de que o Direito, como expressão de determinada sociedade, constitui instrumento com potencial para (i) suprimir e transformar positivamente situações de desigualdades entre homens e mulheres ou para (ii) legitimar, estruturar, ampliar, multiplicar ou ignorar tais desigualdades. Tais circunstâncias impactam os cursos de Direito e, bem assim, a presença das mulheres como alunas ou professoras. O desenvolvimento do conhecimento a respeito das interações entre Direito e equidade de gênero busca formar profissionais que sejam capazes de diagnosticar, analisar e enfrentar os desafios que surgem nesse campo e que sejam diretamente e indiretamente impactados por ele.

Both disciplines mentioned above (PUC/SP and USP) were offered in the years 2020 and 2021 in a virtual way, and their classes could be attended by the interested external public. ¹².

2.8 Awareness that no form of subordination stands alone. we are all reciprocally affected by the oppression of others

Rita Mota Sousa draws attention to the need to "ask the question of the Other' to reveal forms of oppression that are not obvious, not visible at first sight; finding patriarchy present in racist behaviors; or heterosexism in sexist behaviors; or class interest in homophobic behavior are methods that allow us to understand that no form of subordination subsists alone and that we are all reciprocally affected by the oppression of others" (SOUSA, 2015, p. 65). Or, as he rightly puts it Audre Lorde, "I will not be free while any woman is a prisoner, even if her chains are different from mine".

That is why "the injustice done to one is a threat done to all". Baron de Montesquieu.

In this line of reasoning, it is observed that the intersectionality theme becomes of crucial importance when it comes to analyzing the rights of women. Race, class, gender, sexual orientation and gender identity, among others, are social markers of oppression and need to be taken into account from the moment of thinking about public policies to when judicial decisions are made. In relation to this last moment, it is quite appropriate to bring up a judgment in which

¹¹ A ementa da disciplina (junto com outras informações) pode ser consultada em: https://edisciplinas.usp.br/pluginfile.php/5136901/mod_resource/content/3/Direito%20e%20Equidade%20de%20G%C3%AAnero%20-%20Programa_v07.03.20.pdf. Acesso em: 22 nov. 2022.

¹² As aulas podem ser encontradas nos seguintes endereços: PUC/SP: <https://www.youtube.com/watch?v=u0UVeOZ55Pg>
FDUSP e https://www.youtube.com/watch?v=vBxPvsNZ7_g.

the application, or not, of protective measures for a trans woman was discussed. The Court of origin (TJSP) had denied such a possibility, and, on appeal, the STJ reversed the situation. Among the numerous grounds brought by the judgment, the following stand out¹³:

[...] o conceito de gênero não pode ser empregado sem que se saiba exatamente o seu significado e de tal modo que acabe por desproteger justamente quem a Lei Maria da Penha deve proteger: mulheres, crianças, jovens, adultas ou idosas e, no caso, também as trans.[...]

[...] a vulnerabilidade de uma categoria de seres humanos não pode ser resumida à objetividade de uma ciência exata. As existências e as relações humanas são complexas e o Direito não se deve alicerçar em argumentos simplistas e reducionistas.

[...] é descabida a preponderância de um fator meramente biológico sobre o que realmente importa para a incidência da Lei Maria da Penha, com todo o seu arcabouço protetivo, inclusive a competência jurisdicional para julgar ações penais decorrentes de crimes perpetrados em situação de violência doméstica, familiar ou afetiva contra mulheres.

In the same decision mentioned above, the STJ makes specific reference to the categories of *gender and feminism*, providing an important lesson on their scope:

A balizada doutrina sobre o tema leva à conclusão de que as relações de gênero podem ser estudadas com base nas identidades feminina e masculina. Gênero é questão cultural, social, e significa interações entre homens e mulheres. Uma análise de gênero pode se limitar a descrever essas dinâmicas. O feminismo vai além, ao mostrar que essas relações são de poder e que produzem injustiça no contexto do patriarcado.

And as a way of complementing the excerpt from the judgment transcribed above, it is important to mention that, in addition to injustice, power relations produce violence against women. The understanding that gender inequality and gender violence are intertwined is present in General Recommendation No. 35 of the UN CEDAW Committee¹⁴:

10. O Comitê considera que a violência de gênero contra as mulheres é um dos meios sociais, políticos e econômicos fundamentais pelos quais a posição subordinada das mulheres em relação aos homens e seus papéis estereotipados são perpetuados. Ao longo de seu trabalho, o Comitê deixou claro que essa violência é um obstáculo crítico para alcançar a igualdade substantiva entre mulheres e homens, assim como para o gozo pelas mulheres dos direitos humanos e das liberdades fundamentais consagrados na Convenção.

2.9 Always ask the question of the woman (SOUSA, 2015, p. 65) - "note that substantive law can silence the perspectives of women or other excluded groups, highlighting its androcentric bias".

13 O processo encontra-se sob sigilo de justiça, STJ. Rel. Min. Rogério Schietti Cruz, Sexta Turma, por unanimidade, j. em 5/4/2022. Disponível em: <https://processo.stj.jus.br/jurisprudencia/externo/informativo/?aplicacao=informativo&acao=pesquisar&livre=@cnot=018951>. Acesso em: 11 dez. 2022.

14 Para leitura integral da Recomendação, pode ser consultado o seguinte endereço: https://www.onumulheres.org.br/wp-content/uploads/2013/03/convencao_cedaw1.pdf. Acesso em: 11 dez. 2022.

As Rita Mota Sousa makes clear, when the points of view of women are brought in, the law enforcer understands that betting and believing in the apparent neutrality of the norm leaves women without protection.

In the context of Criminal Law, this situation was much debated at the time of the creation of the Femicide Law - Law No. 13.104 of 2015. A division was established in the doctrine between those who were in favor and those opposed to such legislative innovation. An analysis that starts from the feminist perspective sheds light on the subject and leads to the position in favor of the mentioned Law. In this sense, the position of Alice Bianchini, Mariana Bazzo and Silvia Chakian (2022, p. 236):

A técnica de tipos penais neutros, que até então predominava em nossa legislação no que tange ao homicídio, foi substituída pela criminalização gênero-específica. Constatou-se que não são suficientes os tipos penais neutros, pois o fenômeno da violência contra a mulher permanece oculto onde subsistem pautas culturais patriarcais, machistas ou religiosas muito enraizadas e que favorecem a impunidade, deixando as vítimas em situação de desproteção. Ou seja, corria-se (e ainda se corre, por restos de cultura machista que ainda circulam, inclusive, evidentemente, entre juízes) o risco de a sentença ser alcançada por tais concepções de mundo, o que reforçava a invisibilidade do fenômeno e impedia que se fizesse justiça ao caso concreto, já que a maior carga de desvalor do fato (feminicídio) não estava sendo levada em consideração. E não se propõe punir mais, mas fazê-lo de acordo com a gravidade do fato.

Another classic example of how a purely male perspective can bring a totally erroneous bias to the subject, with enormous prejudice to women, can be taken from the explanatory memorandum of the Penal Code, 1940, which reads: Item 71:

“nos crimes sexuais, nunca o homem é tão algoz, que não possa ser, também, um pouco vítima, e a mulher nem sempre é a maior e a única vítima de seus pretendidos infortúnios sexuais”.

Here again, a legal support based on mere stereotypes and conclusions that are not shared with the female way of thinking on the subject emerges.

2.10 Constantly question the practices or rules (SOUSA, 2015, p. 65).

It is necessary at all times to revisit the legal rules in order to observe whether those in force are not riddled with fallacies, misconceptions, prejudices about the female condition, generating unequivocal oppressions.

The concern is pertinent, since, in their overwhelming majority, they were created, are interpreted, applied and executed, without taking into account experiences, values, ways of seeing the world, feminine specificities and even feminist demands. Such demands, "although clearly plausible, have encountered almost insurmountable symbolic barriers. This is especially due to the fact that law is and always has been produced, interpreted and applied by men. This has caused it to distance itself from the ideals and needs of women" (CALIL; MARKMAN, 2020, p. 82).

This exercise, which must be continuous and permanent, has the advantage of uncovering the non-neutral and non-universal content of law and, from there, suggesting urgent corrections.

As Eduardo Ramalho Rabenhorst rightly warns, legal discourse is not only regulatory, "but also constitutes realities and subjects. In this sense, more than having a sex, the law is one of its main craftsmen" (2012, p. 31).

This feminist method therefore aims to "identify the existence of a hidden male norm running through the law, which, claiming to be universal and neutral, ultimately corresponded to the point of view of the men who drafted it" (SOUSA, 2015, p. 55). This is because the myth of the neutrality of the traditional legal method "contributes to the legitimization of decisions, since it hides the patriarchal bias of institutions and hinders the application of the law to obtain emancipatory results" (SOUSA, 2015, p. 58).

It should be kept in mind, however, as Rita Mota Sousa rightly clarifies, that "the question posed by the woman does not require that the answer is always favorable to the woman, but it puts the law enforcer in the position of perceiving the prejudices of the law and attending to certain aspects that respect only historically ignored groups: what are the aspects about those it affects that the law presumes?".

Since positive law, in general, represents a source of perpetuation of power asymmetries and a guarantee of their maintenance in the availability of those who have the power to dictate the laws - in this case, the patriarchal structure of society - the gender perspective becomes fundamental in order to know, denounce and change such a framework. The sharpened gaze demands that themes that really concern women in their relationship with the law be given prestige. But more than that, the communicability of female oppression and its interdependence with other factors of oppression that intersect with this dimension of the person - race, social class, sexual orientation or physical disability, etc. must be perceived (SOUSA, 2015, p. 23). This is called, as already mentioned, intersectionality.

Among many issues that deserve to be revisited constantly and deeply, we can mention, using the list prepared by Rita Mota Sousa (2015, p. 43): sexual crimes, pornography, sexual harassment, violence against women, marital rape.

Regarding the last theme mentioned above, it should be noted that Brazilian doctrine, with regard to the possibility of the husband being the author of the crime of rape against his wife, has already positioned itself in the sense of impossibility (GUSMÃO, 1921, p. 196); NORONHA (1998, p. 72); COSTA JÚNIOR (2008, p. 608). The last author cited changed his mind only in 2010. His are the following words:

Discute-se sobre se o marido pode ser sujeito de estupro. Entendíamos que não, pelo fato de que o estupro pressupõe a atividade sexual ilícita, e a prestação sexual é dever recíproco dos cônjuges. Hoje, entretanto, passamos a entender que o marido poderá responder pelo crime de estupro, desde que empregue a violência física para compelir a esposa à cópula ou a outro ato libidinoso. A solução é a mesma no caso de o agente conviver com a ofendida "more uxório". (2010. p. 674)

The same author, now in a work co-authored with Fernando José da Costa (2011), informs the reasons for his change of understanding:

Este foi o nosso entendimento durante muito tempo. No entanto, este entendimento não mais se admite nos tempos atuais. Seja porque a moderna sociedade, na qual homens e mulheres são iguais em direitos e obrigações, seja porque a violência sexual doméstica atingiu patamares nunca antes vistos, repudia-se, e com razão, a conjunção carnal, bem como qualquer outro ato libidinoso, praticado com violência ou grave ameaça. Entendemos hoje, alinhando-nos à doutrina que desafiávamos em tempos antanho, que não apenas o marido também pode ser sujeito ativo desse delito, como também o pode a esposa. (2011. p. 856)

Although legal advances have been significant, it should be noted that in many cases "when women are not discriminated against by the norm, they will be discriminated against by practice

and/or legal doctrine. This is the 'trap' of the legal patriarchy today, which continues to produce and reproduce female discrimination" (SABADELL, 2010. p. 278).

The lack of adequate care and the reduced number of specialized police stations show that an important guideline of public policies aimed at curbing domestic and family violence against women, established in art. 8, IV, of Law No. 11.340, of 2006 (Maria da Penha Law), which provides for "the implementation of specialized police care for women, in particular in the Women's Care Stations", has not been complied with.

And, worse, any frustration and feeling of helplessness of the victim before the Justice leaves an even greater margin for the previously mentioned secondary victimization (in the analysis of the 6th method). In other words, primary victimization (caused by the accused) is compounded by secondary victimization (caused by the police/state judicial apparatus), further increasing the (already intense) violence against women.

According to data from the "Dossiê Mulher" 2015, prepared by the Rio de Janeiro Institute of Public Security, 9.3% of adult women said they had been victims of rape by their husbands.

Of all these cases, those that reach criminal justice are very rare, highlighting the conviction of a husband to 9 years, 4 months and 15 days in prison, in closed regime, for raping his own wife, in the city of Goianira, in the metropolitan region of Goiânia, in 2014. According to Judge Angela Cristina Leão, responsible for the sentence, "marriage does not give the husband the right to force his partner to carnal conjunction against her will". The husband confessed to threatening his wife with a knife and cursing her, trying to embarrass her¹⁵.

An example of how a feminist perspective can change the way of seeing the subject is Law No. 13,718 of 2018, which amended the Penal Code to include, among the causes of increased punishment, the increase by half in cases, among others, where the perpetrator of sexual crime is the spouse or partner of the victim.

Still on marital rape, the aforementioned research *Perceptions on control, harassment and domestic violence: experiences and practices*, carried out in 2022 by Ipec and the Patrícia Galvão Institute, with support from Uber.¹⁶, shows that 90% of respondents consider the situation of "husband/partner forcing his wife to have sex when she does not want to" as rape. A very positive point, but we still need the rate to reach 100%.

2.1.1 Feminist practical reasoning

A good example of practical reasoning is that arising from feminist advocacy. As Sonia Alvarez, Marlene Libardoni and Vera Soares rightly point out, when it comes to feminist action, the word advocacy, in its journey to the South of the Americas, has acquired different contents and meanings (ALVAREZ; LIBARDONI; SOARES, 2000, p. 167):

Até o início da década de 90, advocacy só fazia parte do jargão das agências de cooperação e do sistema das Nações Unidas, e estava também integrado à prática de lobby de algumas ONGs internacionais feministas sediadas nos Estados Unidos e na Europa. A partir do ciclo de conferências da ONU dos anos 90, e suas sequelas mais recentes (Viena +5, Cairo +5, Beijing +5, Copenhague +5), passou a ser incorporado cada vez mais nos fazeres políticos de muitas ONGs feministas latino-americanas.

15 A matéria completa pode ser acessada por meio do seguinte endereço: <http://www.geledes.org.br/marido-e-condenado-9-anos-de-prisao-por-estuprar-propria-mulher/>. Acesso em: 13.8.2022.

16 A pesquisa completa pode ser acessada por meio do seguinte endereço: https://agenciapatriciagalvao.org.br/wp-content/uploads/2022/09/2022_IPG_Ipec_Pesquisa-Percepcoes-sobre-controle-assedio-e-violenci-domestica-vivencis-e-praticas.pdf.

Todavia, a participação sem precedentes de um número expressivo de ativistas feministas nessas conferências, bem como o acúmulo das experiências locais nas décadas passadas, redundou no desafio posterior de tentar transformar esses acordos internacionais em ações e políticas concretas nesses países. Isso exige inovar as formas de ação e articulação para influir no debate público e nas agendas políticas. Na procura de novas estratégias, metodologias e instrumentos conceituais que dessem conta desse imenso desafio, algumas ONGs feministas latinoamericanas vislumbraram na noção de advocacy — antes vista como 'gringa' e estranha — novas potencialidades. Mais do que a pressão política sobre gestores e/ou legisladores, como usualmente é considerado no norte, o fazer advocacy exige sistematizar aprendizados, desenvolver habilidades de negociação, planejamento e trato com os meios de comunicação. Exige também um conhecimento do terreno político onde circulam as propostas, os atores e os conflitos presentes. Mas, dado que o conceito e a prática de advocacy tinham sido formulados em contextos muito distantes das realidades políticas, econômicas e culturais da América Latina, trazê-lo para nossas práticas exigiu não apenas uma tradução literal, mas um processo complexo e continuado de tradução política. [...] No contexto da frágil institucionalidade política, do enfraquecimento da cidadania e da dramática exclusão social decorrentes das políticas neoliberais, a prática de advocacy feminista na América Latina exige a redefinição de conceitos e a readequação de procedimentos originários em contextos de democracias consolidadas, instituições mais estáveis e direitos cidadãos menos ameaçados. Fazer advocacy 'nos trópicos' não pode ser uma questão meramente técnica — como aparece em alguns dos manuais produzidos no norte. É um fazer nitidamente político, requer revisitar alguns conceitos como cidadania e liderança, rediscutir o papel do Estado e da sociedade civil na construção democrática e repensar as estratégias de incidência feminista na promoção das transformações políticas, econômicas e culturais. No contexto da globalização acelerada, da reforma e do enxugamento do Estado, e da transnacionalização da própria sociedade civil e dos movimentos sociais nesta virada de milênio, esse fazer político exige também adquirir novos conhecimentos e habilidades de advocacy, planejamento estratégico e estratégias comunicacionais. O projeto de advocacy latino-americano — coordenado conjuntamente pelo Centro de la Mujer Peruana "Flora Tristán", do Peru, Equidad de Género, Ciudadanía, Trabajo y Familia, do México, e, no Brasil, originalmente pelo Centro Feminista de Estudos e Assessoria (CFemea) e, desde junho de 1998, pela Agenda Ações em Género Cidadania e Desenvolvimento (Agende) — tem procurado responder a algumas dessas novas exigências do fazer feminista na região.

An example of a successful feminist practice was the "Maria da Penha Law Consortium for Confronting All Forms of Gender Violence against Women", responsible for drafting the proposal that gave rise to the Maria da Penha Law, which was built on extensive discussions with representatives of civil society and bodies directly involved in the issue, with the effective participation of the Consortium in the hearings, debates, seminars and workshops held specifically to serve as a basis for the drafting of the proposal. In fact, there is no one better than women themselves to propose strategies, plans, actions (including the creation and amendment of laws that address the problems arising from gender) capable of promoting emancipation and liberation of women.

The Consortium is formed by the Feminist NGOs CEPIA, CFEMEA, CLADEM, THEMIS, activists and researchers who work in defense of the rights of women, and, since then, has carried out various activities, such as drafting opinions, proposals for bills, technical notes, research, seminars, books and collections, also maintaining its constant articulation with national and international feminist movements and institutions, with the legal academy, with the national

Congress, with the justice system and with networks for the protection of women in situations of violence.

We cannot fail to note that the Maria da Penha Law is the product of articulate feminist action that, in 1998, took the case of Maria da Penha Maia Fernandes to the Inter-American Commission on Human Rights (IACHR), with the commitment and outstanding performance of the Center for Justice and International Law (CEJIL) and the Latin American Committee for the Defense of Women's Rights (CLADEM). The case was judged in 2001, and Brazil was held responsible for negligence, omission and tolerance in relation to domestic violence practiced against women in the country (Case 12.051). Among the recommendations made by the IACHR is the need to develop legislation to protect women from domestic and family violence, which only came to pass almost five years later, through Law No. 11.340 (Maria da Penha Law), with Brazil being the 18th country in Latin America to legislate on the subject, that is, one of the last.

3 CONCLUSION

Brazilian legislation, with regard to the gender issue, has a long history of negative discrimination (and therefore harmful to women), with examples of legal texts, some relatively recent, that expressly provided for discriminatory treatment towards women, confirming the understanding that the social and cultural context contributes to produce and reinforce the belief in difference, being reflected even in the positive norm.

The main discrimination revolved around sexual issues. Examples include: the Civil Code, of 1916 (and which was in force until 2002), which provided, in its article 219, IV, for the possibility of the husband annulling the marriage if he found that his wife had been deflowered previously (there being no analogous provision for the woman who discovered that her husband had had sexual relations before marriage); the Penal Code of 1940 (still in force), which until 2005 included the concept of "honest woman", to identify those whose moral and sexual conduct was considered irreproachable, a characteristic (until then) indispensable to ensure legal protection against certain sexual crimes. This same Code provided (also until 2005) for the possibility of a rapist not being convicted if the woman who was the victim of the rape married him after the crime, since the legislator of the time understood that the punishment would become unnecessary in view of the "repair of the damage to customs", which was the legal good (customs) until then protected by the criminalization of rape. These examples represent the spirit of an era.

This way of thinking, however, has become untenable in the face of the construction of new forms of interpersonal treatments and especially from the feminist consciousness, even more so when the eleven feminist legal methods developed in a masterly way by Rita Mota Sousa, and which were presented above, are put into practice.

This feminist awareness has changed the structures of thought, reflecting directly in several and recent legislative productions, making it possible to show need and locate examples of positive discrimination of women in the Brazilian legal system, as is the case of the Maria da Penha Law, symbol of the struggle of the movement of women for the recognition and guarantee of a dignified and violence-free life as a fundamental right, assured, moreover, in the international orbit.

The internal change in socio-cultural values brought about by feminist consciousness (which must take hold of the minds and hearts of women and men) is the only key capable of leading to the eradication of the patriarchal system, which is directly responsible for female oppression/male domination. The effort of change that reaches each individual can lead to a change in the way of

living in society. "As long as there is no change in mentality, legal patriarchy will continue to permeate relations between women and the legal system" (SABADELL, 2010. p. 278).

The data on violence against women and on the insistent inequality between the genders bring disappointment with the sad Brazilian reality. But it is necessary that the real and terrible situation of women in our country is unveiled, so that, from its knowledge, the next step can be taken, which is to acquire feminist consciousness, which, of course, will lead to involvement with the theme, and this, in turn, and this, in turn, can lead to the much needed and overdue process of change, so that the constitutional precept that proclaims equality between men and women can finally be achieved and, with it, the reduction of violence can be achieved, since the more gender inequality in society, the greater the violence against women and girls.

Let us be the change we want to see in the world!

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