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CODEN: IJRSFP (USA)

International Journal of Recent Scientific Research Vol. 8, Issue, 7, pp. 18625-18629, July, 2017

International Journal of Recent Scientific Research

DOI: 10.24327/IJRSR

Research Article

MEN'S EXPERIENCE IN CRIMINAL PROCESS IN MARITAL VIOLENCE

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DOI: http://dx.doi.org/10.24327/ijrsr.2017.0807.0540

ARTICLE INFO

Article History:

Received 06th April, 2017 Received in revised form 14th May, 2017 Accepted 23rd June, 2017 Published online 28th July, 2017

Key Words:

Intimate partner violence; law; human rights.

ABSTRACT

The Maria da Penha Law was created to prevent domestic and family violence, ensuring the protection of women through legal actions to the men. In this way, they begin to experience multiple livingness while in legal course. The study aimed to elucidate the legal and police experience of men in criminal prosecution for domestic violence. An exploratory and descriptive, qualitative study with 23 men criminally charged with domestic violence. The data were collected through individual interviews and focus group. Then, they were organized by NVIVO® 11 software, and Collective Subject Discourse method. The results revealed the experience of men in the following legal and police areas: the flagrant, the police station, the prison and jurisdiction of domestic and family violence against women. The speeches point to a legal and police experience permeated by situations of embarrassment, humiliation and violence, in addition to curtailing the rights of defense in all areas. It was also possible to reveal the refusal of their act as violence and trivialization of it. Whereas we recognize the necessity to punish male perpetrators, it is essential to think about strategies that ensure such punishment without losing sight the human rights and guarantee right to defense.

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INTRODUCTION

Conjugal violence relies in the social conception of ownership and partner domain, especially in understanding that men hold power over women (Zancan, Wassermann, & Lima, 2013; Beccheri-Cortez & Souza, 2013). This conception results from a society affected by the asymmetrical power relationship between the genres, and also a historic construction strengthened by patriarchal precepts urging male supremacy in social relationship, mostly in marital concept (Oliveira & Gomes, 2011; Carter, 2015). In this sense, the patriarchal system contributes to men and women realize, within marital relationships, that violent behavior is natural or even instinctive and corrective. In addition, they are seen as entirely private nature, not allowing third-party intrusion (Zancan, Wassermann & Lima, 2013).

However, the phenomenon acquires collective effort drawing the attention from public level, by being violation of human rights and the raise morbimortality indicators. In Brazil, 4,762 women were murdered in 2013, which, one-third had their partner or former partner as the tormentor. In addition to

the mortality count is necessary to analyze how much this worsening cost, once the annual disbursement of the Health Unique System (SUS) is more than five million, only with hospitalizations (Brasil, 2012). Facing this, on August 7th of 2006, was enacted Law No. 11,340, known as Maria da Penha (Guimaraes & Pedroza, 2015). This regulation was created in order to prevent domestic and family violence, ensuring women protection through socio- educational and legal-police steps who lead men to reflect on their actions and be liable for their acts. As an example, there are protective measures aimed to the perpetrator. These ensure the woman and her family integrity by: suspension or restriction of weapons possession, home removal, and the keeping of minimum limit distance from the victim, suspension of visits to dependents and probation (Lei n. 11.340, 2006; Carneiro & Fraga, 2012; Garcia, Freitas & Höfelmann, 2013). Given the importance of several legal and police scenarios on criminalization and punishment of such violence, seeing how men have experienced these environments is now necessary, so the reflection and re-education strategies can be introduced early. In that respect, the question is: How did

men experience in criminal process for domestic violence in the legal-police context? The study aimed to elucidate the legal and police experience of men in criminal prosecution for domestic violence.

METHODS

An exploratory and descriptive study with qualitative approach, performed by men who were arrested for domestic violence, and that, at the time of the study, responded to criminal process in a court of Domestic and Family Violence against Women in the city of Salvador, Bahia, Brazil. The data collection was conducted through multi method, using individual interviews and focus group as the main technique. Triangulation was performed in order to increase knowledge about the studied object. The survey took place between May and December 2015.

The initial contact with potential participants was conducted in person by a social worker from the court, who invited them to join a Reflective Group (GR). In the first meeting, besides report the group schedule and how it works, the goals of the research were presented, clarified the potential risks and benefits of the study, preservation of recorded images and the data confidentiality in both steps. It was also guaranteed the right to refuse participation at any time, and clarified other ethical principles proposed in Resolution 466/2012. The study was approved by the Ethics Committee, in the opinion number: 877905.

After the explanation, the men chose to continue participating in the GR or just at the individual interview. Accepting to participate in either case, they signed the Consent Statement. The GR meetings discussed several topics such as family, domestic and marital violence, gender, honor, peaceful conflict resolution, among others, and it was developed during nine meetings, lasting seven months, totalizing 50 hours.

For individual interviews was used a semi-structured guiding, containing the following question: Tell me about your experience in the police and judicial spheres, from the moment of striking until today. This step was performed in a private room from a public school, which also happened GR meetings. 23 men participated in this step, nine were members of the GR. After finishing all the interviews, we conducted a focus group at the last meeting of the GR, as a way to deepen the findings.

The interviews and focus groups were recorded, and their contents were transcribed in full. The data were categorized by software NVIVO® 11, and then organized into central ideas and speech synthesis through the Collective Subject Discourse method. In this method, the collective thought is not connected to the sum of individual thoughts (percentage numerical representation), but to the community speech, the social imagery, social representations, and to the pre-existing thought (F. Lefevre, Lefevre & Marques, 2009). The participants were named by H1, H2, and subsequent. The results were based from the themes of violence, gender and masculinities.

RESULTS

The 23 participants were aged between 25 and 62 years, and they were mostly black, with low education and income around one to two minimum wages. All were arrested in pre-trial

detention for committing violence against his spouse, remaining inmates between 15 and 90 days. The male speeches reveal the experience of men in criminal proceedings for domestic violence in the following legal and police context: the flagrant, the police station, the prison and court of domestic and family violence against women. The findings are organized in the following synthesis central ideas:

Central Idea 1 - The flagrant

At flagrant scope, the collective discourse reveals a police approach permeated by disrespectful and aggressive attitudes, as well as the non-understanding that his conduct was violent and therefore criminal, as shown rejection and embarrassment for being led to the police station.

They knocked on the door. When I opened, I saw they were the police. I was shocked! They told me to go with them to the police station. They made the approach, and said to put my hand over the head, swore at me, kicked, handcuffed and then threw me in the car, as if I were a worthless. It cannot be like this!

Central idea 2 - The police station

In this central idea, the speech shows that men feel unprotected and wronged, especially because of the right violation to present his version from occurred fact, suggesting that sometimes it is distorted by the complainants.

When I got to the police station and went testify, the delegate did not let me speak. He said: "Shut up! Only speak when I ask. I do not feel sorry for you, look for a law to defend yourself". The way she spoke was aggressive. I was arrested, defenseless and without any right, even to speaking. After the testimony, she put me in the jail. At morning, I did the corpus delicti exam and was taken to the prison. At the DEAM, the woman makes statement on her way, and we are not heard. Certainly, the law came to help, but at this point, it is flawed.

Central idea 3 - The prison

This category reveals the degrading conditions and violence that men were subjected in prison, experiencing follow situations: exposure to an environment with poor hygiene conditions and overcrowding, humiliations, physical assaults and death threats by professionals and/or other prisoners. It also, exposes the fact the embarrassment of sharing the same environment with prisoners who committed various crimes, as well as being forced to use drugs and assaulting other prisoners.

You are thrown into prison and get to know the inside. The jail was dirty, full of rats and only one bathroom for everyone. The bed was a board and I slept sitting with the arm hanging. There were 14 men, people who have committed all kinds of crime. The other inmates forced me to use marijuana, hit the prisoner who arrives and threaten me to death. I was beaten in prison and I was sequelae. I was very scared and always nervous. The agents (prison officer) also beat us and humiliated: they gave me kick and shock in the back, called me a bum, bastard. Being in that place is a horror! The law needs to be revised.

Central idea 4 - Court of domestic and family violence against women

The Court of violence scope, the male speech reveals that men see the court as an environment of punishment and abuse. Also, emerge the perception that domestic violence is mutual and the indignation that the professionals do not perceive them as well as victims, only consider the woman version. Going to the court is like having to pay for my sins, because I know I will be humiliated, beaten, mistreated. They do not let me speak. Also, do not let my lawyer speaks. We had to have room for defense, but they look women always like being more fragile and think they are not attacking us. We cannot say anything because the truth is always what the woman says. The Maria da Penha Law is cruel to men.

DISCUSSION

The collective speeches demonstrated the legal and police experience of men in criminal prosecution for domestic violence. It is clear, in all scenarios, a constant victimization and suppression of male rights and their rejection to penalties arising from police report.

This unconformity is due failure to understanding the occurrence of a criminal act, punishable, which shows naturalization of the phenomenon (Oliveira & Gomes, 2011; Silva, Gomes, Acosta, Barlem, & Fonseca, 2013). Such understanding, rooted in the society and anchored in gender inequalities, is the result of a patriarchal and sexist legacy, which is expected from women the subservience, and from man firm stance to maintain domination over home, making violence as routine in domestic environment (Stevens, Oliveira, & Zanello, 2014; Texeira, 2010).

The conjugal violence, in this conjecture, is seen as inherent in the marital relationship and a private interest, so there is no acceptance, especially the author, from external interference (Sumner *et al.*, 2015). This aspect was evidenced at the discourse regarding the man's surprised reaction when police knocked on his door to take him to the police station. Add to denial and embarrassment feelings by being handcuffed and carried in a police car, because it is not recognized as a criminal who deserves to be approached by police standard procedures.

In this respect, the Precedent No. 11 of the Federal Supreme Court directs that only lawful use handcuffs when occurs resistance and a founded escape fear or danger to one's or others physical integrity (Sarlet & Weingartner Neto, 2016). It is because there is a rule for human rights defenders that its use is humiliating and degrading. Also, the Federal Constitution, article 5, subparagraph LVII provides that no one shall be considered guilty until the final judgment of the criminal sentence, and the use of handcuffs violate this principle (Camargo & Alves, 2008). This context converges on our findings since, in the speech there is no mention to any resistance conduct of being carried to the police station.

Thus, this study findings show that in many scope, for example, at the police station and court men contest the women testimony, which may be a male tactic not to be responsible for the crime. It is not uncommon the accused of domestic violence to state the companion report as untrue or partial (Silva, Coelho, & Njaine, 2014). Nor are rare false

accusations cases, including taking women to indemnify the victim, because incur crime of slanderous denunciation, as provided in Article 339 of Brazilian penal code (Lei n. 13.104, 2015). This scenario of ambiguity highlights the importance of a perceptive legal and police systems that can thoroughly ascertain what happened and decide for the most sensible and fair conduct.

After recording their statements, the participants of this study were conducted for the precautionary examination (corpus delicti). This standard procedure, although not mandatory, aim to verify the accused physical integrity before having their freedom curtailed, as well as produce expert evidence to protect him and the police officers that lead to the police station (Alfradique, 2016). After performing this procedure, the study participants had their provisional arrest issued. According to the Maria Penha Law, it can be applied in two different possibilities, the first being under Article 20 which is the common case to ensure the process. The second, included in Article 42 was created to ensure the effectiveness of urgent protective measures (Veras, 2013). In both cases, the judge may revoke the decision, if during the process course he checks the reason lack to subsist. He can also ordain again if transpire reasons justifying incarceration 7. The prison experience was also shown in this study, with emphasis on degrading violence conditions which men were submitted and that provided physical and mental after pains. This is a reality already recognized by the researchers, presenting obstacles to be faced such as: dignity and respect lack due to the basic resources shortage such as food and personal care products; the adequate infrastructure absence; violence among inmates, abusive use and traffic of illicit drugs (Lauermann & Guazina, 2013; Andrade & Ferreira, 2014). This scenario makes difficult the inmate re-socialization, when they return to social life (Ferreira, Menezes, & Dias, 2012; Fernandes & Righetto, 2013).

There is no determination of exact time that men should on probation. No further having subsidies, the judge may finish the preventive detention and determine the man release, which can occur in two ways: by paying the bail, when it is established a value considering the type of committed offense, his personal conditions, and the circumstances indicating his dangerousness. Also, by granting provisional release with payment dispensation, in face of the impossibility of paying bail for not presenting financial conditions (Madureira et al., 2014).

The provisional release concession does not dispense the man to respond in judgment for the criminal process, being assisted along the Domestic and Family Violence court since the release (Lima & Silva, 2013). In his speeches, the men reveal discontent in transiting at the court environment, by recognizing it as a place where they will be mistreated and blamed even before the sentence. Throughout the legal and police process, abuses are observed by the police officers who work in environments covered by the accused men. Other researches also show these findings, suggesting that even this experience has led to his violence and offender character exaltation (Dullius & Hartmann, 2011; Araujo, Fontes, Costa, Souza, & Bernardi, 2014).

The participants also point that are curtailed of right to defense. This deprivation is unveiled by the opportunity lack of reporting his fact version in any scenarios from study. We highlight the Article 5, subparagraph LV from 1988 Brazilian Constitution that protects the legal right of a person in criminal proceedings to defense. In addition, the Law No 11,340 / 06 in Article 12, provides, during the testimony, the right to speak for the victim and her witnesses, and also to the suspect and his witnesses (Constituição, 1988). Failure to comply their right of defense is one of the reasons that make men express dissatisfaction with the Maria da Penha Law, although they verbalize about its importance. They also reveal unhappiness because they perceive domestic violence as mutual, but the responsibility is only directed to men. Researchers show the reciprocal nature of domestic violence at the time reveal peculiarities in a gender perspective: while women commit against partners mainly psychological violence, physical strength stands out as the expression most commonly used by men, primarily evidenced by payment dispensation, in face of the impossibility of paying bail for not presenting financial conditions (Madureira et al., 2014).

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By the time we recognize the need to punish male perpetrators of violence against women, it is essential to think about strategies that ensure such punishment without losing sight of the human rights and guarantee right to defense. In this context, it is necessary to work with professionals from the legal and police system to impartially and fairly process, according to governing the constitution.

It is important to emphasize the rejection and embarrassment feelings that arisen with the legal and police experience, emerging for non-recognition of their act as violence and its trivialization. Since this issue is based on the social construction of roles and powers between the genders, these findings show the importance of creating men (and women) reeducation spaces in the gender perspective as a possible way to build more respectful and harmonious relationships. In this context, the articulated spaces are inserted by the judicial sector in order to promote actions for gender re-education and accountability of men in criminal proceedings.

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How to cite this article:

Gilvânia Patrícia Do Nascimento Paixão *et al.*2017, Men's Experience In Criminal Process In Marital Violence. *Int J Recent Sci Res.* 8(7), pp. 18625-18629. DOI: http://dx.doi.org/10.24327/ijrsr.2017.0807.0540
