



## MARITAL RAPE: HIDDEN FEMALE NARRATIVES<sup>1</sup>

*Mariana Fernandes Távora*\* 

*Ministério Público do Distrito Federal e dos Territórios*

*Bruno Amaral Machado*^ 

*Uniceub*

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### ABSTRACT

*This article presents an introductory study, whose main question is: how does gender affect or produce the marital rape narratives of women in Federal District who access the legal system to report domestic violence? To answer this question, the authors used gender as a decolonized category, making a historical exam of the control of female sexuality. To approach the question, the authors consider gender as a decolonial category, and conduct a study of the historical control of female sexuality. Using a qualitative approach, they then proceed to field research. The analysis of individual reports of women facing domestic violence, carried out by psychosocial teams of the Public Prosecutor's Office of Federal District and its territories (MPDFT), is combined with the results of questionnaires completed by those who carried out these reports. The findings suggest that marital rape is a kind of violence that stays invisible, under robust social control preventing its exposure to women.*

**Keywords:** *Marital rape; invisibility; domestic violence.*

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\* email address [marianatavora@hotmail.com](mailto:marianatavora@hotmail.com)

^ email address [brunoamachado@hotmail.com](mailto:brunoamachado@hotmail.com)

## RESUM

*Aquest article presenta un estudi introductori, la pregunta central del qual és: com el gènere afecta o produeix les narratives de violació conjugal de les dones del Districte Federal que accedeixen al sistema judicial per a denunciar la violència intrafamiliar? Per a respondre a aquesta pregunta, els autors utilitzen el gènere com a categoria descolonitzada, fent un examen històric del control de la sexualitat femenina. Els autors, a abordar la qüestió, consideren el gènere com una categoria decolonial i realitzen un estudi del control històric de la sexualitat femenina. Usant un enfocament qualitatiu, procedeixen posteriorment a una recerca de camp. L'anàlisi dels informes individuals de dones que sofreixen violència domèstica, realitzat pels equips psicosocials del Ministeri Públic del Districte Federal i els seus territoris (MPDFT), es creuen amb els resultats dels qüestionaris contestats pels qui van realitzar aquests informes. Les troballes suggereixen que la violació marital és un tipus de violència que roman invisible, sota un fort control social que impedeix la seva perceptibilitat a les dones.*

**Paraules clau:** *violació conjugal; invisibilitat; violència domèstica.*

## RESUMEN

*Este artículo presenta un estudio introductorio, cuya pregunta central es: ¿cómo el género afecta o produce las narrativas de violación conyugal de las mujeres del Distrito Federal que acceden al sistema judicial para denunciar la violencia intrafamiliar? Para responder a esta pregunta, los autores utilizan el género como categoría descolonizada, haciendo un examen histórico del control de la sexualidad femenina. Los autores, en abordar la cuestión, consideran el género como una categoría decolonial y realizan un estudio del control histórico de la sexualidad femenina. Usando un enfoque cualitativo, proceden posteriormente a una investigación de campo. El análisis de los informes individuales de mujeres que sufren violencia doméstica, realizado por los equipos psicosociales del Ministerio Público del Distrito Federal y sus territorios (MPDFT), se cruzan con los resultados de los cuestionarios contestados por quienes realizaron estos informes. Los hallazgos sugieren que la violación marital es un tipo de violencia que permanece invisible, bajo un fuerte control social que impide su perceptibilidad a las mujeres.*

**Palabras clave:** *violación conyugal; invisibilidad; violencia doméstica.*

## **Introduction**

“Rape culture” was an event held by the Public Prosecutor's Office of Federal District and its territories (MPDFT) in 2017<sup>2</sup>. One of the speakers explained the juridical treatment for crimes against sexual freedom in the Brazilian law since the Imperial Period (1822-1889). The lecture described a peculiar way of legal status to the availability of the female bodies and individuals. Besides, it made the audience think about the manifested and hidden functions of law. Although there was no discussion about rape inside the intimate affective space, it was an environment where the issue caught our attention. The presentation made us think, and it brought us a desire to understand how female bodies and individuals are transformed into objects within the symbolical peripheral of an intimate-affective relation. Is there an intersection between culture, history, and law that produces few prosecutions in Domestic Violence and Family Courts in Federal District for marital rape cases? Or do those marital rape cases never happen in the Federal District, and for this reason, there are no official data concerning these cases? The last question was immediately confronted with the fact that there is a lack of field studies suggesting the existence of hidden data, as we will detail below.

Guided by this purpose, we conducted exploratory research on two scientific databases, Google Scholar and b-on<sup>3</sup>. Searching for the keywords ‘rape’, ‘conjugality’, and ‘affective relationships’ in Portuguese and English, we identify only one study in Brazil (Dantas-Berger and Giffin 2005). In Portugal, we found one master’s thesis (Cardoso 2016). However, the U.S. provided the most considerable number of studies about the topic (Berman 2004; Bennice and Resick 2003; Mahoney and Williams 1998; Randall and Venkatesh 2015).

Randall and Venkatesh (2015) mention that rape committed by an intimate partner had attracted little attention in scientific research regarding legal reforms and human rights advocacy. The authors bring attention to the fact that in more than half of the world's countries, this type of sexual violence is not criminalized as in the cases of the Czech Republic and Japan. Berman (2004), referring to research conducted in 1996 by Bergen, demonstrates that only 17% of the American Rape Crisis Centers ask the victims about a rape committed by a partner. The author acknowledges that it has been presumed in a long time that marriage would give the husband unlimited access to sex with his wife. There are legal and cultural myths that darken the understanding of marital rape as violence. According to Mahoney and Williams (1998), this aspect mainly impacts the victims, who not perceive sexual aggression inside the intimate space as rape. However, in agreement with studies conducted in the U.S., the authors estimate that one in ten and one in seven women will be raped by their husbands. Berman (2004) argues that one-third and half of women that suffer aggression were submitted to this kind of sexual violence at least once. This scenario suggests that we are witnessing a hidden phenomenon, and precisely because of that, there are few discussions around this topic, contributing to the archaic social control of women

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2 This information can be found on MPDFT website. Available at <http://www.mpdft.mp.br/portal/index.php/comunicacao-menu/noticias/noticias--2017/9092-mes-da-mulher-mpdft-debate-cultura-do-estupro>.

3 Online Knowledge Library. Available at: [<https://www.b-on.pt/>].

(Berman 2004; Bennice and Resick 2003; Cardoso 2016; Dantas-Berger and Giffin 2005; Mahoney and Williams 1998; Randall and Venkatesh 2015).

From this initial hypothesis, we formulated the question: how does gender affect or produce the marital rape narratives of women in Federal District that have access to the justice system to report domestic violence? This is the central question that conducted us. We believe that it can highlight the invisibility of marital rape for women (Campos et al. 2017), considering the strength of culture in producing gender significance (Amâncio 2003: 706).

Two were the objectives established to answer this question: (I) the recovery of discussions about marital rape in history and their effects in the legal and social field; (II) the conduction of exploratory research, with a qualitative approach, based on legal documents reporting marital rape (Marconi and Lakatos 2003; Quivy and Van Campenhoudt 2017). Once we traced this path, we decided to analyze gender as a decolonial category (Gomes 2018a; Pereira 2015; Segato 2012), which suggests a connection between historical reasons for the invisibility of marital rape and the control of women's sexuality as a mechanism to perpetuate masculine power (Badinter 1986). Following this idea, we aimed to rescue the condition of women's sexuality in the Brazilian colonization and its reflex in the legislation (Campos et al. 2017). After that, we present how the paradigm of gender-based domestic violence was managed to conceptually frame marital rape under the legal and sociological dimensions. In the end, we try to demonstrate that the changes in the Brazilian legislation made between 2005 and 2009, which created conditions to criminalize marital rape (Campos et al. 2017), coexist with a social invisibility of this kind of violence.

Once this framework was established, we started the fieldwork. In the first stage, we selected the documental data (Quivy and Van Campenhoudt 2017), consistent of nine reports from women facing domestic violence produced between 2014 and 2017 by the Psychosocial Sector of MPDFT, a government office to subsidize the work of justice prosecutors of the Public Ministry Office. After that, we initiated an intensive direct observation to confront the documental data with reality. This way, we used the questionnaire inquiry (Carmo and Ferreira 2008; Marconi and Lakatos 2003; Quivy and Van Campenhoudt 2017) applied by two professionals responsible for preparing the reports after the reception of women facing domestic violence.

Based on the analysis of the documents and the questionnaires, we aimed at identifying if marital rape is trapped by a gender order that conditions or limits the narratives of women victims of violence.

### **Gender and Race: decolonial readings matrices**

The concept of gender appeared in medical science discourse in 1968 in Robert Stolle's *Sex and Gender*, which brought the aspect of sex, a biological connotation, and gender, in the domain of culture or a product of sociological origins (Amâncio 2003). In 1970, the term 'gender' was used in social sciences

notably because of feminist mobilizations that questioned the so-called natural divisions of sexual roles. They tried to show that the distinctions between females and males operated in the social ambit (Amâncio 2003; Dias 2015; Piscitelli 2009).

Gender issues were explored by feminisms starting from the already existing sociological theories, inside a critical perspective that considers human experience from a woman's point of view (Dias 2015)<sup>4</sup>. Joan Scott (1989) sees this appropriation as a mechanism to maintain feminism away from politics, “in a pretentious scandalous” from this way confer legitimacy to it. An iconic author to the postmodernist feminists (Amâncio 2003; Gomes 2018a), she proposes using gender not as a concept but as a category of analysis, the only one with enough strength to interrogate and transform the existing historical paradigm. Scott's proposal is based on the questioning of the binary opposition between male and female from history and deconstruction of the terms of sexual difference.

Scott rejects previous feminist propositions which tried to comprehend gender from different perspectives (differences, inequality, oppression, and structural oppression) (Dias 2015). In this article, there is not enough space to develop this approach. However, it is sufficient to remind that in different kinds of feminisms, especially those based in the gender oppression, the concept of patriarchy, extracted from anthropology, was used as a category to discuss the domination system of women by men (Connell and Pearse 2015; Saffioti 2015). Even though there are differences in how each theoretical feminist group uses the term, extensive literature has criticized its use from a universal perspective since it is a form of power that alternates in different historical periods and places (Dias 2015; Piscitelli 2009; Scott 1989).

Machado (2000: 3-6) believes that the concept of gender would not have come to replace patriarchy, nor are they opposites, since they have different dimensions. The author explains that patriarchy is a type of Weberian ideal-type whose application can occur in different historical moments to identify modes of social organization where there are systems of power oppression. She warns that gender is a concept inserted in the field of social transformations, *locus* of potency for experiencing diversity “without *a priori* and with all the flexibility to analyze” the most diverse societies and cultures in their historicity. She considers that this category emerged as an alternative to the social conditions of sexual difference, of social relations of sex and relationships between men and women, to break with the naturalization of sexual differences. Thus, for the author above, it is possible to think of contemporary patriarchy. However, if used as a category of analysis, it can impoverish “the contradictory meanings of transformations”.

Gomes (2018b) indicates two risks when assuming the position that incorporate patriarchy/domination. The first one is related to the acceptance that the colonial narrative is the only way to explain the form of relations, making it invisible other forms to make and have or not a gender. In an almost salvationist logic, the second one is based on domination's broad and structural character, that only external

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4 The author groups feminist theories according to gender differences, gender inequality, gender oppression, and structural oppression.

interventions could fight (Gomes 2018b). Segato (2012) affirms that the problem of the patriarchal and gender domination is that both seek to transmit a universal ideal, brought by the advance of modernity in the field of universal law as if the world before intrusion were organized in a binary way, separating men and women, public and private spheres. The author indicates tribes that used to make circular political decisions between public and private, in a scheme much less dichotomous than our actual way of organizing the world.

In this article, we will not focus on a mode of social organization, but we will seek to capture perceptions of social reality. Thus, we distance ourselves, at least in the field of interpretation, from the patriarchy category. However, we recognize its potency for denouncing the persistence of male domination in contemporaneity, that still seems, particularly in the Brazilian case, inscribed in the love sphere (Machado 2000). We assume that the gender category gives us greater access to the difference matters, allowing us to identify women's power and asymmetric relationships between women and men when involving class and ethnicity dimensions. At the same time, this perception opens the way for discussions about the repositioning of subjects and review of violent practices (Campos 2013; Connell and Messerschmidt 2013; Gonçalves 2017). We suggest reading gender as an analytical category (Scott 1989) associated with race, a fundamental decolonial concept (Gomes 2018b).

The comprehension of gender as a category of analysis presumes, as proposed by Scott (1989), that the articulation of two propositions: gender as a constitutive element of relation based on the perceived differences between sexes; and gender as the first way to signify power relations. The first proposition indeed brought in numerous criticisms to Scott once it remits to the dichotomy sex/gender. According to Gomes (2018a), this perspective does not sustain itself as notable in some texts published by Scott between 2008 and 2014, in which her intentions were made clear: gender should be comprehended as an element that “destabilize the concepts of women, men, sex and even body”, all simultaneously socially, bodily, and historically inscribed (Gomes 2018a: 68).

This destabilizing gender appears to be articulated with the concept proposed by Connell and Pearse (2015). They analyze it as a structure itself and not as an effect of another reality. However, it must be thought in terms of the context of its interactions with other dynamics from social life, the productive area of transformation. For example, Connell and Pearse (2015) emphasize that in Latin America, gender does not end in a dichotomy since it is a system related to relationships, such as women-women, that go through the domestic work sphere and those involving life cycles. Even if we find ancient roots in the myths about sex, the study of the construction of differences between sexes, both historically and socially, has shown that there are other orders in which the particularities of the female category find exceptionally efficient ways of legitimacy (Amâncio 2003). This agency power cannot be covered by the veil of colonialism and deserves to be considered as a deconstruct of gender.

We remember that coloniality, according to Quijano (2018: 73-75), is a standard power structure that imposes a “racial/ethnic classification of the world population”, such as that present in Eurocentrism, which refers to the idea that the world is divided “in inferior and superiors, irrationals and rationals,

primitives and civilized, traditional and moderns". It is a concept that derives from colonialism but is somewhat different. In this perspective, there is a structure of domination-exploitation within a territorial jurisdiction where a particular population exercises control of political authority, means of production, work and dominates those of different identity.

From this gender perspective matrix, the sign of race is included to examine what the "coloniality of gender erased, destroyed or made invisible". Besides, this perspective helps to understand how the modern notions of gender (that we seek to discuss and combat) are constructions that use race and gender to complete the opposition between humans and non-humans in an articulated way (Gomes 2018b: 77). Humanity attribution processes move through language and settle in bodies for a "cisgender form and colonial matrix of intelligibility" (Gomes 2018a: 344). For bodies out of this order, it remains forgetfulness, invisibility, and, in the end, a language that does not give them humanity.

As researchers from the global south, we must consider that the construction of the concept 'human' in coloniality and post-coloniality was silent concerning women, black people, and queer bodies (Pereira 2015). Although modernity can suggest progressive guarantees of rights and citizenship, the time of gender is slow and often seems to revert to the regime of protection and maintenance of a male status (Segato 1999). This study, which intends to access the experience of women who sought the justice system after being victims of marital rape, can only be based on an interpretation that introduces the concept of 'body' theoretically, as this is the only way to examine these bodies discarded from the category of humans. This way, we can identify "essentialisms and universalizing abstractions that reduce and violate so many bodies in the name of normative and colonial patterns of gender and race" (Gomes, 2018b: 345)<sup>5</sup>.

### **Control of Female Bodies in Intimacy: a social and historical control projected in Brazilian laws**

When analyzing the relationships between men and women, the philosopher and historian Elisabeth Badinter (1986: 95) emphasizes the "control of female sexuality" as a founding piece of the patriarchal society, whose mark is the dad's dominant power. The author warns us that marriage, which originated an exchange between men through women, was the great instrument of this domination, with the appropriation of the female womb for "the protection of the man's inheritance".

Segato (1999) considers that the sexual access to women in a patrimonial logic was the contract that instituted society, as rape being the law of interdiction to incest and not the murder of the father. That is why the rape experience can be understood by historical and ethnographic evidence as almost universal. For the author, this access became regulated by a contract where women would enjoy the same laws in

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5 The author uses the constitutional hermeneutic expression of race and gender to introduce the body into theory. This way, the concept of 'human' may enter the legal sphere to make visible those subjects once erased by gender and coloniality. In this article, we use this idea, although we are not dealing with a constitutional interpretation once it seems interesting to us to spread this field interpretation for the infraconstitutional field.

modern times. From the 1960s onwards, the deconstruction of the status associated with gender appeared on the feminist agenda. However, the abrupt modernization process, with the rupture of community ties, delayed reflection on the status system that governs gender, preventing, for example, the appropriation of the female body as a criminal act (Segato 1999). And rape, in modernity, came to embody the metaphor of the disciplinary and avenging act of male status frayed by the contract of equality of gender (Segato 2003).

In Brazil, this status regimes of the hierarchical gender structure dates back to colonization. Del Priore (2012: 240) argues that the colonization process constituted a “spiritual crusade”, whose objective was to regulate people's daily lives through ethical guidance, catechesis, and spiritual education. The author (2012: 240) explains that the family organization and the control of sexuality were where the exercise of this patriarchal power occurred. These spheres were intensely used by the Catholic Church, which explored relationships of domination and managed to introject them within the family, “condemning the wife to be an exemplary obedient and submissive domestic slave whose existence was justified to take care of the house, cook, wash clothes and serve the head of the family with sex”. In Colonial Brazil, only men had the right to sexual desire, and the wives were condemned to submission and virtue, never being able to occupy her husband's lover's place. So, the notion of *debitum conjugale* was born, which became a social law and enshrined woman's duty to have sex with her husband when requested, under penalty of incurring in sin (Del Priore 2012: 391).

The practice of making docile female bodies for sexual practices was intensified by the slave regime, with the logic of dehumanizing black bodies, intended for the provision of goods and services, especially sexual ones, as calls our attention Gonzales (1984). The author reminds us of the impossibility of love in the slave quarters, where desire was interdicted, and the road was left open for free access to black female bodies. Ventura (2018) reminds us that, during American slavery, the rape of a black woman was not conceived as a crime, and, after abolition, if the perpetrator was a white male, the law was ignored.

The condemnation of desire by religious orders installed the obligation of women to have sex with her husband and based the Brazilian criminal legislation. The norm was to criminalize only rape outside marriage. Campos et al. (2017: 992) emphasized that from the Criminal Code in the Brazilian Empire until the promulgation of Law nº 11.340 of August 7th, 2006 – known as Maria da Penha Law –, the typification of sexual violence in Brazil “kept unquestionable the rape committed by the husband against the wife because he was his property”. It is possible to observe that in almost two centuries, the Brazilian Law left marital rape outside the penal protection by objectifying the female subject “wife”.

The Criminal Code in the Brazilian Empire (Brazil, 1830)<sup>6</sup> framed rape as a crime against honor, including both sex with an underage virgin woman and sexual relations with an honest woman. In the first case, marriage itself would exclude the perpetrator of any punishment, even in case of familiar ties.

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6 Law of December 16th, 1830. Brazil (1830). Retrieved from [http://www.planalto.gov.br/ccivil\\_03/leis/lim/lim-16-12-1830.htm](http://www.planalto.gov.br/ccivil_03/leis/lim/lim-16-12-1830.htm).



The punishment was only valid if family ties prevented the marriage. Activities different from sexual intercourse or seduction of virgin women were unpunished if the author married the victim (Campos et al. 2017; Montenegro 2015).

In the first Brazilian Republic (Brazil 1889)<sup>7</sup>, rape, besides being considered a crime against honor, had the purpose of protecting the following legal interest: family honesty and public outrage of modesty. Violent assault, defloration, and rape were defined. The existence of rape was more linked to the honesty of the victim than virginity itself. In case of defloration or rape of an honest woman, the perpetrator had to compensate the offended family, indicating the financial nature of the crime and the objectification of women (Campos et al. 2017). Rape was considered women abuse, virgin or not, through violence that consisted of physical force and by means that made it impossible for women to resist or defend themselves. Marriage was maintained as a consequence of the extinction of the punishment.

In 1916, when the Civil Code (Brazil, 1916) first appeared<sup>8</sup>, it was possible to annul the marriage if the husband discovered that the wife was not a virgin. One more indication of women being treated as an object, a situation where they were associated to a defect thing (Campos et al. 2017).

The penal reform in 1940 almost did not change the condition of women concerning sexual crimes. For example, it maintained one chapter named “Of the crimes against tradition” in the hall of crimes against sexual liberty (Brazil 1940)<sup>9</sup>. Besides, rape was redefined as sexual conjunction using violence or severe threat. The definition of a crime of rape without vaginal penetration was retained and there was the introduction of the notion of sexual possession of an honest woman using fraud. The condition of an honest woman was removed of rape, despite being preserved in crimes involving attempts against decency and sexual possession by fraud. The crime of raping public women or prostitutes was abolished, even though the distinction was prolonged in jurisprudence (Campos et al. 2017; Montenegro 2015).

Only in 2005 the Criminal Code banishes the expressions ‘honest women’, ‘crime of seduction’, and ‘marriage as the extinction of punishment’<sup>10</sup>. In 2009, rape got an enlarged-type status<sup>11</sup>, in other words, It is a crime to have sexual relationship or any other type of libidinous act against the victim's desire – both for women and men. That same year, it altered the title of crimes against sexual freedom, which became “Of the crimes against sexual dignity and sexual liberty”. Also, the rape crime of vulnerable

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7 Law n° 847. Brazil (1889). Retrieved from [http://www.planalto.gov.br/ccivil\\_03/decreto/1851-1899/D847.htmimpressao.htm](http://www.planalto.gov.br/ccivil_03/decreto/1851-1899/D847.htmimpressao.htm).

8 Law n° 3.071. Brazil (1916). Retrieved from [http://www.planalto.gov.br/ccivil\\_03/leis/L3071impressao.htm](http://www.planalto.gov.br/ccivil_03/leis/L3071impressao.htm).

9 Ordinance-Law n° 2.848. Brazil (1940). Retrieved from [http://www.planalto.gov.br/ccivil\\_03/decreto-lei/del2848.htm](http://www.planalto.gov.br/ccivil_03/decreto-lei/del2848.htm).

10 Law n° 11.106. Brazil (2005). Retrieved from [http://www.planalto.gov.br/ccivil\\_03/\\_Ato2004-2006/2005/Lei/L11106.htm](http://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2005/Lei/L11106.htm).

11 Article 213 of the Penal Code defines ‘rape’ as: “To constrain someone, through violence or severe threat, to have a sexual relation; or to practice or allow another libidinous act. Penalty: imprisonment, from 6 (six) to 10 (ten years)”.

people was included in the Criminal Code (Brazil 2009)<sup>12,13</sup>.

The Brazilian law, which maintained until 2009 the understanding that crimes against cultural tradition and not against people, extended the premodern concept that rape is: (i) a form of aggression that puts at risk the rights and prerogatives of the father and the husband; (ii) a way to prevent the protecting control of the inheritance and the continuity of the lineage. Therefore, the law suggests, in a compelling manner, how slow gender time is, “a crystal almost immune to its own structures” (Segato 1999: 7).

In 2006, Maria da Penha Law (Brazil 2006)<sup>14</sup> disrupts the current paradigm, as far as it presented violence against women in the intimate sphere as a public issue, and not only as an individual problem, treating it as a severe violation of human rights. In 2005, marriage was taken away from the legitimator *locus* of sexual violence, and in 2006, domestic violence against women was inserted into the legal paradigm, freeing the visibility of marital rape for the first time.

### **Marital Rape: a gender-based domestic violence and its social and legal dimensions**

The use of the expression “domestic violence” first appeared in the '70s by the feminist movement to give visibility to the phenomenon of violence in the domestic sphere (Tavares 2011). Initially, it was based on the problem of “beaten women” (Karmen 2004: 233). The concept of this type of violence was expanded to embrace the violence against other family members, such as children and older adults. That is when the use of familiar violence began (Tavares 2011). Beyond these family members, other types of victims were included, for example, men and aggressions in non-heterosexual relationships. Other types of domestic abuse got space in research, such as those sex-related. Karmen (2004) exposes that nowadays domestic violence refers to a larger group, including children, parents, older adults, siblings, relatives that live in the same space, intimate partners that are or not married, and previous partners.

Bandeira (2014) highlights that in classic sociology, the first studies about violence focused on social control and the role of the State, and only with the emergence of the feminist movement, social sciences started to look to the interpersonal violence characterized by the power asymmetry between men and women. In 1980, the correlation between violence and gender began to be analyzed as a sociological category, in which the original configuration became the violence against women, defined as the central aspect of the Brazilian feminist movement.

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12 Article 217-A of the Penal Code defines rape of vulnerable: “To have a sexual relationship or perform another libidinous act with a child under 14 (fourteen) years old or with someone who, due to illness or mental deficiency, does not have the necessary discernment to perform sex, or who, for any other reason, cannot resist. Penalty: imprisonment, from 8 (eight) to 15 (fifteen) years”.

13 Law nº 12.015. Brazil (2009). Retrieved from [http://www.planalto.gov.br/ccivil\\_03/\\_ato2007-2010/2009/lei/112015.htm](http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2009/lei/112015.htm)

14 Law nº 11.340. Maria da Pena Law. Brazil (2006). Retrieved from [http://www.planalto.gov.br/ccivil\\_03/\\_Ato2004-2006/2006/Lei/L11340.htm](http://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2006/Lei/L11340.htm).

Even though they present many definitions, depending on the empirical and theoretical implications, Bandeira (2014), Saffioti (2015) and Ventura, Ferreira and Magalhães (2013) call attention to the use of terms such as ‘domestic violence’, ‘marital violence’, and ‘gender violence’ as synonyms. However, Karmen (2004: 233) warns us that “the choice to define a term can make the scope of the problem much larger or smaller”. For Bandeira (2014: 451), when we use the category 'gender violence' we refer to violent actions produced in “relational contexts and spaces and, therefore, interpersonal, that have not consistent societal and historical scenarios”. The author affirms that there is a profound correlation between gender violence and violence against women due to the asymmetric historical and social capital of women.

Costa (2017: 46) argues that violence against women is one of the expressions of gender violence. In the same line of reasoning, Bloom (2008: 14) conceives gender-based violence as “a general term managed to signify the violence that occurs as a result of the normative expectations associated with each gender, and with unequal relations of power between genders, in the context of a specific society”. Bloom (2008) explains that violence against women and girls constitutes part of gender-based violence, and the victims can also be boys, such as the discrimination by sexual orientation. It is relevant to think about gender violence beyond the dichotomy men/women to avoid the risk of falling into a reductionist binarism that postmodern feminisms seek to fight (Dias 2015). Hence, this point of view also reaches dissident bodies, building “a gender and sexuality grammar that drives out from the compulsory heterosexuality, reinventing biology” (Pereira 2015: 426).

However, as Bandeira (2014) affirmed, we should not forget that the gender violence that is born inside romantic intimacy becomes a mechanism that keeps control of bodies, sexuality, and the female mind to maintain the hierarchy between men and women. Physical and sexual violence, both anchored in symbolic violence<sup>15</sup>, are instruments to disseminate the patriarchal order. They are potentially present in a gender relation in intimacy once in the private space the types of knowledge of the world are more connected to the emotional than the cognitive sphere (Bandeira 2014: 459 apud Almeida 2007: 29).

For Bandeira (2017: 29), marital rape is the most emblematic situation of gender violence against women, as “practiced in the name of love”, once it prioritizes

“the aggressor’s satisfaction to the detriment of the other - the victim’s. There is a situation of exclusion, precariousness, and marginalization that results from the male partner's control over the female partner during sex, demanding that she be available, almost a slavery relationship, whose argument are: 'if you love me, you do it... You obey me.’”

In a study that dialogues with Bandeira's writing, Randall and Venkatesh (2015) explain that marital rape, as well as that which occurs in other forms of intimate relationships, is a form of domestic violence

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15 According to Segato (2003), symbolic violence is the basis for all other forms of violence. It is revealed in the eruption of a fantasy, which is the return to the moment before the contract of equality in modernity, where the law of male status prevailed.

and a global social problem, constituting a severe violation of human rights. Based on the proposed framework, it is necessary to understand marital rape as gender-based domestic violence of sexual nature. In Brazil, legally speaking, from the guidelines brought by the Maria da Penha Law, especially in articles 5 and 7<sup>16</sup>, it is possible to frame marital rape as a type of sexual violence in the domestic sphere, whose basis would be gender violence. This law defines sexual violence encompassing the notions of witnessing, maintaining, and participating in unwanted sexual intercourse by intimidation, threat, coercion or force, and other acts such as preventing contraception methods or forcing marriage.

The criminalization of behaviors related to sexual violence is present in the Criminal Code and sparse legislations. The definition of rape, already mentioned in chapter 2, is present in the Brazilian Criminal Code in article 213. It has the following content: to constrain someone, through violence or severe threat, to have a sexual relation; or to practice or allow another libidinous act. Therefore, legally, the association of the Maria da Penha Law with the Criminal Code allows us to define rape as one of the modalities of sexual violence. There is a practice that involves sexual intercourse and a lascivious behavior using violence or severe threat against a woman.

Even though this legal definition is innovative by extending the concept of rape beyond sexual intercourse, the permanence of the violence or serious threat requisite excludes other ways to force women to have sex without consent. According to Campos et al. (2017: 994):

“[...] the embarrassment of an ego (usually masculine) against someone known, who become a target; sexual object (usually a woman), not necessarily practiced through physical violence that causes injury, neither through what came to be known in the juridic culture as the most common meaning to a serious threat: the use of a weapon.”

Therefore, embarrassment is a concept closely related to consent. Mahoney and Williams (1998) expose that in the U.S. there is also a problem to defining marital rape, exacerbated by the lack of studies in the area. The authors bring attention to the necessity that the concept of 'force' considers the intimate context of a relationship once many studies focusing on the experience of assaulted women demonstrate that coercion demands the inclusion of acts that are temporally distant, or coercion caused by the history

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16 Art. 5 of the Maria da Penha Law defines 'domestic and family violence' as: "For the effect of this Law, domestic and family violence against women is defined as any action or omission based on gender that causes the woman's death, injury, physical, sexual or psychological suffering and moral or patrimonial damage: I - in the scope of the domestic unit, understood as the permanent space shared by people, with or without family ties, including people sporadically aggregated; II - in the scope of the family, understood as the community formed by individuals that are or consider themselves related, joined by natural ties, by affinity or by express will; III - in any intimate relationship of affection, in which the aggressor lives or has lived with the abused woman, regardless of cohabitation. Sole paragraph. The personal relations listed in this article are independent of sexual orientation. Art. 7 of this Law defines 'the forms of domestic and family violence': 7. The forms of domestic and family violence against women, are, among others: [...] III – sexual violence, understood as any behavior that forces the woman to witness, maintain or participate in unwanted sexual intercourse, by means of intimidation, threat, coercion or the use of force; that induces the woman to commercialize or to use, in any way, her sexuality, that prevents her from using any contraceptive method or that forces her to marriage, pregnancy, abortion or prostitution, by means of coercion, blackmail, bribe or manipulation; or that limits or annuls the exercise of her sexual and reproductive rights; [...]"

of violence.

This difficulty is related to the fact that both in Brazil and the U.S., until the '80s, rape was related to sex committed by person with rights over a woman (Campos et al. 2017). Studies in victimology (Karmen 2004: 249) suggest a difficulty to distinguish 'rape' of 'lovemaking' because the social ideology, which appears in the judicial practices, builds the image of an unknown offender, powerfully armed, that rises in the darkness to attack the young or elderly virtuous victim, without experience, and expects her to resist. Andrade (2005) affirms it is much easier to recognize rape on the street than those practiced by the head of the household in the justice system since he typically does not fit the rapist stereotype. Ventura (2015: 86) emphasizes that the management by the criminal justice of the female consent in sexual crimes “always serve to the same objective: to reinforce the male authority in a society of patriarchal principles”.

However, contrary to common sense and the “official legal criminal and criminological discourse”, it is known that sexual violence against women does not start with a pathological minority, but with recurrent acts. It is undoubtedly practiced on the street by strangers, although mostly in family relationships (Andrade 2005). According to a study carried out in Brazil by Cerqueira and Coelho (2014: 9), 70% of rapes are committed by the victims' relatives, boyfriends, or friends/acquaintances, suggesting that the domestic space is not yet a protective place. The study mentioned above indicates that the probability of someone being a victim of recurrent rape is associated with the aggressor's dominant relationship with the victim. If the aggressor is a family member, this chance is 3.47 times higher than if he is only an acquaintance.

Nevertheless, even though studies in victimization advance and allow us to consider the preferential *locus* for sexual violence as a problem, they are still silent about marital rape. Conducted by Vargas (1999) between 1993 and 1994, a study about the administration of justice in sexual crimes in Brazil showed the inexistence of criminal actions and convictions for practices of crimes of sexual nature in the context of conjugality.

Between 1996 and 1997, another research aimed at studying court cases and rape judgments in Brazil, from a socio-juridical gender perspective, identified that in 70% of the cases the perpetrators and their victims knew each other previously. However, the study did not clarify if the offenders and the victim maintained a marital bond when the crime happened (Pimentel, Schritzmeyer and Pandjarian 1998).

The correlation between rape and sex has been an object of discussion by feminists in recent decades. Andrade (2005: 96) draws attention to the fact that rapes in marital spaces are much more related to a situation of violence than to sexual satisfaction or sexual passion. This relation frame rapes in etiological terms as a “sexual act at the service of non-sexual needs”. If in the '70s rape was associated with an act of male power and not with conduct of sexual nature, as an attempt to question the psychoanalytic theories that claimed that women desired to be sexually subjugated, in the '80s there was a rejection of the non-sexualized view of rape, being interpreted as a sexual manifestation of power

and dominance. In the '90s, under the influence of deconstruction and postmodernism, rape began to be understood through a language bias, being defined by political decisions that “exclude certain interpretations and perspectives and favor others” (Ventura 2018: 54).

Whether considered a sexual act, a power, or a language, marital rape has, in its base, a “matter of reproduction, the transmission of property and performance of masculinity” (Ventura 2018: 69). Marital rape can be comprehended, by the social and historical angle, as a type of sexual violence made invisible by an order, a gender structure that naturalizes the sexual access of the female body by a male without her consent.

In marital rape, there is a historicized body, that is, a body that incorporated new meanings throughout history and became real through speeches that deny humanity and, consequently, legal protection (Gomes 2018a). We suggest that marital rape, even though it can be framed as a crime, persists as an invisible kind of domestic violence in legal practices. This scenario also reaches the victims, as we are going to expose further, based on exploratory research made through documental data and an inquiry questionnaire.

### **Marital Rape in Federal District: research methodology**

Based on the topics discussed, it is possible to admit the legal possibility of framing marital rape as a crime in the Brazilian legal system, even though there is no legal type for this specific crime. However, the legal prediction did not impact the legal practices as we had shown before. Studies in victimology also indicate society's difficulties in recognizing marital rape as violence (Karmen 2004). In this scenario, we set out our methodology to answer the question that fundamentals all this work: how does gender affect or produce the narratives of marital rape in women from Federal District that have access to the legal system to report domestic violence? To this end, we chose to apply exploratory research to the objectives; qualitative research to the approach; documental research and direct observation to technical procedures (Marconi and Lakatos 2003). The first phase has a documental nature once we collected documental data, especially legal. The second phase was constructed through intensive direct observation, consisted of confronting documental data with reality. For this, we used in-depth questionnaires inquires (Carmo and Ferreira 2008; Marconi and Lakatos 2003; Quivy and Van Campenhoudt 2017).

The analysis used as empirical material nine reports of women facing domestic violence. These reports were produced between 2014 and 2017 by sectors of psychosocial analysis that integrate the Social Sector of the Public Prosecutor's Office of Federal District and its territories (MPDFT). The Social Sector of MPDFT is a service that subsidizes the work of prosecutors and attorneys of the Brazilian Public Ministry<sup>17</sup>.

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17 More information can be found on MPDFT website. Available at <http://www.mpdft.mp.br/portal/index.php/conhecampdft-menu/ceps>.

These reports are related to criminal procedures from the Domestic Violence and Familiar Courts in Federal District. They were produced based on requests from prosecutors working with domestic violence against women. The reports were made by psychologists or social workers that are part of the MPDFT and work in the psychosocial analysis sectors. In the last 13 years, these sectors have been known for their multi or interdisciplinary action institutionalized in the MPDFT. This is the result of a decentralization process of the Psychosocial Executive Secretariat that happened between 2011 and 2013. In these years, the psychosocial sectors were created inside the Justice Prosecutor's Coordination Offices of Federal District. The expansion of those units happened to adjust the reception of women facing domestic violence to the local realities. Nowadays, the reception is made either individually or collectively. Now, one can recognize that the teams “already have some qualification. They talk openly about how gender relations work as a foundation stone of violence against women”, even though no studies can trace the methodologies used (Reis Brazil 2015: 349)

The access to the documents happened after reaching out to three professionals of the psychosocial teams via e-mail. The research content was explained, and we requested the reports that described marital rape, but not exclusively this narrative of sexual violence. Only nine reports sent by e-mail were selected, out of 13 reports produced between 2014 and 2001. The selection criteria were the following: reports that could identify which crime unleash the opening of a legal procedure, whether having access through reading or to the electronic domain of the Justice Court of the Federal District and its Territories (TJDFT). This was chosen since the formal report of violent conduct to the police indicates a perception of this act as a form of violence.

The reports were copies that were in the MPDFT's archives databases since the originals are part of the related criminal proceedings. Therefore, the reports are public documents. The constitutional precept of publicity of judgments made by the Judiciary makes court proceedings public documents. This principle is based on the disclosure of processing documents regulated by the Civil Code Procedures and definitions of the Law of Archives<sup>18</sup>. According to Vieira (2016), the publicity rule is also a central principle of the Brazilian Freedom of Information Law, except in cases of secret information and legal

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18 Article 93 of the Constitution states that: “Complementary law, of the initiative of the Supreme Court, will provide for the Statute of the Judiciary, observing the following principles the following principles: [...] IX - all judgments of the organs of the Judiciary shall be public, with reasons for all decisions, under penalty of nullity, and the law may limit attendance in certain acts to the parties themselves and their attorneys, or only to the latter, in cases in which the preservation of the right to privacy of the person confidentiality does not harm the public interest in information”. Article 155 of the Code of Civil Procedure of 2015 of the Code of Civil Procedure 2015 provides that: “procedural acts are public. The proceedings shall, however, be held in judicial secrecy I - in which it requires the public interest; II - that concern marriage, filiation, separation of spouses, conversion spouses, conversion into divorce, alimony, and custody of minors. Sole paragraph. The right to consult the records and to request certificates of its acts is restricted to the parties and their attorneys. The third party, who demonstrates legal interest, may request the judge a certificate of the dispositive part of the sentence, as well as of the inventory and partition resulting from the divorce”. The Code of Criminal Procedure, in article 20: “The authority will assure the inquiry the necessary secrecy to elucidate the fact or required by the interests of society”. And the Law of Archives, in article 7: “The public archives are the sets of documents produced and received in the course of their activities, by public bodies of federal, state, Federal District and municipal scope as a result of their administrative, legislative and legal functions”.

secret hypotheses, which were not part of the consulted reports<sup>19</sup>.

Despite the reports being public documents, we requested MPDFT's authorization to use the reports for the research. MPDFT provided consent, respecting ethical safeguards.

After selecting the nine reports, we elaborated the data and systematically classified them using tabulation (Marconi and Lakatos 2003). Below is a table (table 1), built from data extracted of the nine reports, using the following categories: age, residency, income, race, occupation, marital status at the time of the attendance, time of relationship with the aggressor, number of children, crime registered in the police report and description of sexual violence at the attendance. The information between quotation marks in the table indicates a literal transcription of the contents from the reports.

We emphasize that the category of race in the Brazilian context has been operated from productions of the Black Movement and from some Brazilian sociologists. They conceive race in a political and social dimension resignified by black people themselves. It is a "social category of exclusion", used to name, identify, or talk about black people and the mechanisms of direct and indirect discrimination used in Brazilian society to exclude, make unviable and destroy them (Gomes 2005: 44).

We also clarify that official documents, such as the report of nine women welcomed at the shelter, the object of this research, as a rule, are filled out based on the classification of the Brazilian Institute of Geography and Statistics (IBGE) and the Institute for Applied Economic Research (IPEA). For statistical purposes, they consider that the black racial group in Brazil is composed of black and brown people. Santos (2002) explains that they are similar groups, but, on the other hand, distant or unequal if compared to the situation of the white racial group. Therefore, they should be aggregated into a "single category of blacks, since racism in Brazil does not make a significant distinction between blacks and browns, as is imagined in common sense" (Santos 2002: 13).

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19 Article 3 of the Access to Information Law states that: "The procedures provided for this Law are intended to ensure the fundamental right of access to information and must be carried out in accordance with the basic principles of public administration and with the following guidelines:

I - observance of publicity as a general precept and of secrecy as an exception; II - observance of publicity as a general precept and secrecy as an exception of public interest, regardless of requests; III - use of means of communication made possible by information; IV - fostering the development of a culture of transparency in the public administration in public administration; V - development of social control of public administration".



	Case 1. Maria	Case 2. Joana	Case 3. Márcia	Case 4. Fabiana	Case 5. Lúcia	Case 6. Vera	Case 7. Juliana	Case 8. Ana	Case 9. Valéria
<b>Age</b>	48	19	16	61	48	28	38	24	58
<b>Residency</b>	Samambaia	Ceilândia	Samambaia	Santa Maria	Santa Maria	Pedregal	Taguatinga	Santa Maria	Santa Maria
<b>Income (R\$/month)</b>	780	960	450	0	965	2500	2000	900	400
<b>Race</b>	Brown-skinned	Brown-skinned	Not mentioned	Race criterion was not used	Race criterion was not used	Race criterion was not used	Race criterion was not used	Race criterion was not used	Race criterion was not used
<b>Occupation</b>	General helper	Teller	Maid	Maid	Retired due to disability	Licensed practical nurse	Accountant	Waitress at a restaurant	Informal babysitter
<b>Marital status at the time of the attendance</b>	Separated from the aggressor for nine years	Separated from the aggressor for two months from the attendance	Separated from the aggressor without specified time	Separated from the aggressor but living in the same place	Separated from the aggressor without specified time	Separated from the author after the police report	Separated for 9 months	Separate since the police report	Separate for 2 years
<b>Time of relationship with the aggressor,</b>	21 years	5 years	Living together without specified time	Not mentioned	8 months	8 years	9 years	2 years	27 years
<b>Number of children</b>	4	1	0	4	2	1	3	2	4
<b>Crime registered in the police report</b>	Verbal violence (swearing)	Attempted rape	Not expressly stated. We checked TJDF website: crime of lesser offensive potential	Financial abuse practiced by the child she had with the sexual aggressor	Threat and home invasion, according to consultation made on the TJDF website	Verbal violence (swearing) and physical aggression	Threat and verbal violence (swearing)	Physical aggression	Threat to her and physical aggression to her child
<b>Description of sexual violence at the attendance</b>	Generic report without specifying how and when	Yes. See below*	Generic report of sexual intercourse without consent and reports attributing seriousness to the threat of expulsion from the house and "beating"	Yes, but not specified, although it describes physical aggression in detail, such as a ladder push, which caused a leg fracture	Oral sex that hurt the clitoris and refusal to use a condom	The aggressor forced her to have sexual relations. She brought to report that he threatened her with a firearm	It mentioned the aggressor's attempts to have sexual intercourse without her will. On another occasion, the aggressor undressed and assaulted her, which she named as torture	The aggressor tried to have sexual intercourse by force but could not because she screamed	She reported that the aggressor broke into the room, kicked the door, and forced her to perform sexual activity through physical force. She specified the month and year

\* "She said she wanted to remain virgin, but the perpetrator pressured her a lot. She had a forced sexual relationship with him for about six months of dating".

\* She also reported another episode during a breakup, when she woke up with the aggressor on top of her, naked. She also said she refused to have sexual intercourse but "was losing strength". She managed to free herself and enter the bathroom, but the aggressor broke into the room. There was a non-consensual sexual intercourse.

Source: made by the authors 2020.

It is important to emphasize that their names have been changed to preserve these women's identity. To maintain the confidentiality, the date they report the aggression to the Psychosocial Sector is not specified. However, such information was registered in the reports. It is essential to explain that the reports were named as cases and randomly numbered from one to nine. That is, no criteria for numbering were established.

To better understand and approximate to the reality the content of the reports, we also chose to listen to the professionals who welcome women facing violence and produce the reports after this procedure. We

started a new stage of the research choosing a questionnaire as the survey technique, applied via e-mail, with semi-structured questions. The survey had a lower degree of directivity, thus providing more freedom of response (Carmo and Ferreira 2008). At this stage, two qualified informants were selected to apply the interview, both servants of the Psychosocial Sector of the MPDFT. The selection criteria are the following: (i) professionals who prepared the reports for research; and (ii) significant experience in providing individual care to women facing violence. They are, therefore, “privileged witnesses” of the object we intended to study, in this case, marital rape in Federal District (Quivy and Van Campenhoudt 2017: 71). The selected people were identified as professional Y and professional X. The use of quotation marks was used to mention what they said.

The research then turned to the sample “conveniently selected from the chosen universe (population)”, not being representative, but “with characteristic features in a proportion relative to the total of the universe” (Marconi and Lakatos 2003: 163). In the next section, we will interpret and discuss the systematized data presented in the table above, duly confronted with the answers obtained in the surveys.

### **Data Discussion**

In this phase of data discussion, we tried to use the analysis techniques of both categorical and expression analyses (Quivy and Van Campenhoudt 2017). This research was limited due to restrictions that will be explained later on.

In the category “crime registered in the police report”, only 1 of 9 cases was reported as marital rape. In the other 8 cases, the register of the aggression in the justice system was due to violence other than sexual violence, such as physical aggression (cases 6 and 9), verbal aggression (swearing and threats - cases 1, 5, 6, 7 and 9) and financial abuse (cases 4 and 5). However, in the category “description of sexual violence at the attendance”, only 5 cases show the narrative of marital rape (cases 3, 6, 7, 8 and 9). However, it was not named as 'rape' and/or 'violence', but rather as forced or constrained sexual intercourse. The non-identification of forced or constrained sexual as rape or violence seems to be a recurrent narrative in psychosocial care, as the informants explain:

“Women seem to have difficulty expressing sexual acts that happened through violence (Professional Y).

Women don't verbalize directly; they describe the situations and show discontent and sadness. (Professional X).”

We can think, as Bennice and Resick (2003: 241) propose, that the “existence of a cultural stereotype that marital rape is not real rape” leads women “to question their personal experiences”, preventing them from understanding marital rape as violence. When discussing the issue of criminalization of marital rape, Randall and Venkatesh (2015: 159) mention the existence of an Australian research in which “violence sexual was perceived by only 12 percent of interviewed” and only after pressure concerning other forms of domestic violence.

As in 5 of the 9 cases, women brought the disclosure of “forced sexual intercourse” when they were in psychosocial care focused on domestic violence, it is also feasible to infer the existence of denaturalization of marital rape. Likely, the possibility of talking about private experiences that happened in institutional spaces of an inter and interdisciplinary nature contributes to blurring the binary logic of modernity. This logic probably has as power strategy to remove the political from the private sphere (Segato 2012). One can think of the existence of bodies and subjects that end up moving in another direction, letting go of the colonial logic (Pereira 2015). This interpretation finds resonance in the findings arising from the surveys applied, in which individual or collective welcoming of women appeared as a space for redefining social representations about violence. How states the professional X, “the violation of sexual dignity and sexual and reproductive rights seems to be recognized by them only after the attendance and reflections provided individually or collectively”. Y also adds that “during the reception, it’s possible to rethink these events. Women are often amazed to realize that this is possible to happen even in sexual intercourse”.

Another relevant fact is that only in case 2 the victim reported the sexual violence as a crime. In this case, there is a report of two experiences of sexual violence in the category “Description of sexual violence at the attendance” that could be framed as consummated rapes. However, they were not reported to the justice system. In this regard, the shifting reiteration may cause some influence on the exit process of marital rape from the marital debt *locus* to the field of violence. On the other hand, breaking silence only in the third episode shows the difficulty of removing marital rape from the private space (Bandeira 2014). This difficulty reveals robust social control, which works like Foucault's panopticon (1995)<sup>20</sup>, a surveillance introjected into female bodies, which are trained to be docile and obedient to their husbands (Saffioti 2015)<sup>21</sup>. This resistance in the act of publicizing marital rape is described by the professional X, who believes that “social and family pressure often restricts possibilities of changing this reality”.

In case 4, the report of sexual violence practiced by the former partner appears when the financial abuse was attributed to her child, without any description of the type of sexual assault experienced by the women. It is noteworthy that case 4, in the “age” category, corresponds to the oldest woman in the sample (61 years old). In other cases, the ages are between 16 and 58 years old and the police records were made after a violence perpetrated by the woman's ex-partner. Case 4 suggests that age may favor beliefs that the experience of marital rape is not violence, preventing its disclosure to the justice system. We cannot think of marital rape as an experience lived uniquely, otherwise we may incur an analysis that considers women as a universal category (Gomes 2018b). There is also no way to dissociate age and the inherent historic capital. The case mentioned above refers to a woman who lived a good part of her youth in the Brazilian dictatorship, with severe impacts on the publicity of violence. It is a life story marked by the political, which is staged in the field of gender (Scott 1989). This way, a revelation

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20 The author used the image of the panopticon to refer to the surveillance that the architecture of prisons guarantees to prisoners, even if only one guard is present.

21 The author uses the panoptic scheme to refer to the surveillance exercised over women, workers, and black people.

grammar is produced, which requires contemplating the subject and his history to be understood.

The “marital status at the time of the attendance” category reveals that all women, when heard by the MPDFT Psychosocial Sector, were separated from the perpetrator of sexual violence. This can be understood as a challenge in disclosing marital rape inside an ongoing affective relationship. We remember that Brazilian coloniality intensified the abyss between the public and the private (Segato 2012), confining women to the domestic, non-human place (Gomes 2018b), which constitutes a barrier to understanding an experience as violence. Machado (2001: 2) describes that “subjects and bodies are controlled to infinitely repeat the same network and the same format of social relations that one wants”. We return to our colonial inheritance of indissolubility of marriage, in which the gender system presumed the re-inscription of women in a scheme of hierarchy and obedience (Del Priore 2012). In a study conducted in Federal District with subjects involved in domestic violence, Machado (2000) recalls that the construction of the idea of 'feminine' in modernity seems to move away from the notion of submissive subject in terms of sociability. However, in the loving dimension, there is still room for little-negotiated marital contracts.

In no case did the expression or verb 'rape' appear. Like already mentioned, in 5 of the 9 cases, the expressions 'forced' or 'constrained sexual intercourse' arrived. This seems to be the grammar used by women according to what one of the interviewed professionals explained to us:

“Rape doesn't seem to me a common word when reporting marital sexual violence. The word violence also seems underused by women. It's more common to report concrete episodes (how 'he thrown a cloth on my face and said I was ugly'; that I wasn't even good for that'). The word rape seems to be used more in situations where the aggressor was unknown (Professional Y)”.

The research indeed has a limiting factor, as the report presents itself formally as a paraphrase of the victims' declaration. Surely, it would be recommended to resort to in-depth interviews with the women themselves to explore their representations about the sexual violence they have experienced more carefully. But the fact that physical, verbal, and financial abuse have triggered a criminal record, as already mentioned, also suggests that these types of violence are seen more as such than marital rape. We recall that only one situation took the woman to the police station and, even so, only after suffering sexual violence three times. At this point, the construction of Western eroticism, deeply marked by female passivity and male aggression, blurs the line that divides the sexual act from the act of rape. Besides, it places the female body as a sacrifice (Machado 2001). It is possible to considerer that this obliteration of rape results from a gender mandate that weighs on the female representations and shows the survival of perverse facets of coloniality. This way, “the appropriation of the female body, within certain conditions, does not necessarily constitute a crime” (Segato 1999: 10). Benice and Resick (2003: 230) argue that the widespread cultural belief that marital rape is not “real rape” ends up invalidating the victims' traumatic experiences and limits the identification of these crimes and the search for help.

In the U.S, Mahoney and Williams (1998) identified women's reluctance to label the experience of

marital rape as such. It was recurrent the evasion of words such as “rape” and “sexual assault” when discussing sex forced by a husband or an intimate partner. The authors mention an emblematic case in which a woman was forced to have sex four times in front of her child. However, when the interviewer asked her if she had been raped, she said no. They emphasize that women who defined 'marital rape' as violence only did so when the aggression resembled a classic rape, such as when related to kidnapping by her own husband. In this case, comparing our research with the American findings, we consider that the “material basis of patriarchy was not destroyed”, existing a male pact to maintain the oppression of women (Saffioti 2015: 112). We prefer, however, to lead by interpretations that dialogue with our realities and history. Even though the data found in our research point to the difficulty of naming marital rape as such, they indicate progress in entering an institutional space where narratives are normally hidden in the architecture of daily life. These realities suggest particularities in gender relations in Federal District, which find some efficient outlets for legitimacy (Pearse 2015; Amâncio 2003; Segato 2012). The data indicate that the relationship established in the service promoted by the psychosocial teams gives women the power to choose other interpretive paths, namely those that place sexual violence into the public sphere (Moraes 2007) and aggravates it as a rape crime.

In a survey carried out with nine women, aged between 25 and 51 years old, at an integrated support center for victims of domestic violence in Brazil, Dantas-Berger and Giffin (2005) reached a similar result to what was reported here. These women appealed to this center to denounce marital violence. However, the description of sexual violence was not included in the first report and only appeared later. In the interviews, the researchers were able to note that “indulged or under resistance sex was recurrent, but few times named as violence” (Dantas-Berger and Giffin 2005: 422). Also, forced vaginal sex inside marriage was not identified as violence, suggesting an introjection of the archaic and patriarchal notion of “marital debt”. On the other hand, some of the women's statements, such as those that mention “disgust with the relationship”, “need to wash themselves immediately after” or “little sexual desire”, suggest ambivalence of feelings. These statements show common reactions to cruel rape, practiced by an unknown subject (Dantas-Berger and Giffin 2005), using little persuasion, and committed by force or threat” (Segato 1999: 1).

Even though the research conducted by Dantas-Berger and Giffin (2005) precedes the changes in Brazilian legislation, which altered the legal scenario to possibly frame marital rape as rape, the results collected from the analyzed reports show that social practices do not always follow legal advances. This situation suggests the need for public policies aimed at this kind of violence, as well as educational campaigns that change the private and family vision of marital rape.

We emphasize that it was not possible in the present study to examine if the invisibility of marital rape is more strictly affected by the racial factor. That is because of the nine selected reports, only three contained boxes for specifying race. Only in cases 1 and 2 expressions related to race appeared: “dark-skinned”.

However, case 1 brings a particularity that demands reflection. The woman who was received by a

Psychosocial Sector of the MPDFT declared herself as “brown-skinned”. We clarify that the report was filled out by a professional of the Psychosocial Sector of the Public Prosecutor's Office of Federal District. However, it is the person welcomed who declares herself as black. The expression "brown-skinned" in Brazil reveals an alienation to blackness and reinforcement of whiteness, both as a norm and a ruler of superiority (Kilomba 2019).

It is as if this woman could only recognize herself from the white Other, as Fanon (2008) states, updating the colonial technology of invisibilization of the visible. This finding reveals the importance of racial issues being problematized in psychosocial care, particularly because in Brazil there is still a high rate of victimization of black women in rape crimes. In 2019, 44.61% of rape victims were black and brown, according to data from the Brazilian Yearbook of Public Safety (Brazil 2020).

The professionals who attended these women recognized the difficulty in managing the sociological category of race. For Y, there is an obstacle that also extends to “other professional categories of the socio-legal areas”. Professional Y pointed out that she can currently link statements of marital rape with the racial issue, but that “this is not an affirmation that can be made about all” her “career path”. Y remembered a case in which a woman reported that “her husband, as well as his family, told her he could’ve gotten a whiter woman”. Y pondered that today, after further study on black feminism, critical criminology, and feminist criminology, she is more sensitive to observing race as a structural element in the attendance care, without the need for statements that expressly denounce this issue.

Professional X states that “the contact with this issue happened after welcoming women facing domestic violence”. However, “as self-criticism, this category should’ve greater representation, especially in the reports sent to the prosecutors, because even if it’s possible to observe” this phenomenon “empirically, it deserves better visibility”. X warns that “when it comes to white women, the responses to violence are different, especially concerning the social support network, as they have more resources to tackle the issue”. X argues that:

“The ethnic-racial dimension is essential, as it allows visibility to women that were assisted and to rethink more generic approaches that sometimes hide a secular problem in Brazil, that is racism, and black woman's position in society (most of those who are assisted).”

Crossing the data found in the reports with those provided in the questionnaire shows a “near oblivion” of racial issues in psychosocial care. Here we use “near” once the interviews reveal an awakening of the theme, yet fragile. Correlations between 'race category' and 'sexual violence category' cannot be extracted from the psychosocial reports, especially in the final remarks. Particularly in the researched scope, MPDFT's performance suggests the existence of a racial grammar that acts as an epistemological obstacle. This grammar makes the domination invisible, placing race as a non-related and fixed category, only belonging to the Other (Prando 2017). This logic refers to Beauvoir's proposal (1987) for gender category, which is the construction, throughout history, of the pure otherness. That is, of a man who is the One, who defines the Other, and subjugates this Other so that it does not become One.

## **Conclusion**

The path traced in this work confirmed the sustained hypothesis for the initial question. The nine psychosocial reports consulted denounced a language that sometimes makes invisible, sometimes obscures the issue of marital rape for women in Federal District. Indeed, this type of violence only had a protagonist in one police report. In the others, the statement appeared linked to the description of other types of violence, and yet without using the expression 'rape'. The interviewed professionals confirmed the non-use of this expression in the narratives of sexual violence. Furthermore, when the sexual assault was reported to the professionals of the Psychosocial Sector of MPDFT, women were already separated from their partners, indicating that marriage is a veil covering this phenomenon.

It still seems that the obsolete notion of *debitum conjugale* (Del Priore 2012: 391) still haunts the daily lives of women assisted by the Psychosocial Sector of the MPDFT. According to research quoted by Mahoney and Williams (1998), this concept also seems to inhabit male conceptions. The researchers discovered the existence of a gray area between consensual sex and rape since most men who watched rape scenes in the intimate space did not label it as violence. Machado (2001) warns us of the cultural construction of an analogy between the imposed sexual act and the sexual act that results from the partners' desire. The authorization of rape inside marriage is established in the social imaginary, usually seen as “no rape”. There is no interdiction, within relies on a 'yes' and a 'no' situation (Saffioti 2015). On the other hand, women's statements to the professionals of the Psychosocial Sector constitute a movement of exhaustion in colonial binarism. There is a scenario to make the domestic political, allowing “transitions in perceptions and forms of representation” of rape in the context of marriage (Moraes 2007: 55), which deserves attention from the justice system.

In fact, this is a space that deserves a more significant investment. For example: even though collective psychosocial services monitoring women already happen in some administrative units (Reis and Brasil 2015), there are more ways to expand their presences and fertilize community citizenship, promoting discussions about the control of female bodies. According to Segato (2012), this can prevent the risk of making cross-cutting policies, which tend to make specific categories of women invisible, such as black women and elderlies. However, it is necessary that these spaces better articulate the racial matter with gender. According to the data collected, the Psychosocial Sector of MPDFT is still shy regarding the intersectional field, not having incorporated more forcefully the idea that “the experience of rape for black women is different, including concerning how they will be recognized as victims by the selective penal system” (Andrade 2018: 2).

Predicting the perpetrator's punishment for the crime of marital rape in Brazil has its mishaps, notably about what is understood as embarrassment and consent. In this regard, it is necessary to foster debates that rethink the legal logic “that only visible injuries and threats using weapons intimidate; that verbal threats do not intimidate and do not embarrass” (Campos et al. 2017: 998). The inclusion of this kind of violence in the paradigm of gender brought by the Maria da Penha Law contributes to the visibility of this matter, even though the focus of studies and research in this area is still on other types of aggression.

Dantas-Berger and Giffin (2005: 2005) warn that a large part of Brazilian statistical data refers to physical violence, followed by psychological violence once “sexual violence committed by an intimate partner in the private sphere is little evidenced or non-existent in the statistics available”.

Within the scope of the MPDFT, it is essential that sectoral initiatives are articulated, for example, to discuss how intersectionality between coloniality, race, and gender can be incorporated into individual and collective care in cases of sexual violence. It is essential that these discussions also reach the interpretive processes in the legal field, which needs to be energized to subvert legal theory with silenced or erased narratives (Gomes 2018b). It is also crucial to implement intersectoral actions, expand specialized health and legal services, as well campaigns that name marital rape as it is. Hence, it gets out of the confinement of the domestic sphere. As Mahoney and Williams (1998) point out, a woman who is raped by her partner lives with her rapist.

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