




"THE DEFENSE OF HONOR" UNDER DEBATE: CASES AND ARGUMENTS REGARDING THE LEGITIMATE DEFENSE OF HONOR IN JURY TRIALS

A "DEFESA DA HONRA" EM DEBATE: OS CASOS E AS TESES DA LEGÍTIMA DEFESA DA HONRA NOS TRIBUNAIS DO JÚRI

"LA DEFENSA DEL HONOR" A DEBATE: CASOS Y ARGUMENTOS SOBRE LA LEGÍTIMA DEFENSA DEL HONOR EN LOS JUICIOS CON JURADO

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ABSTRACT

This article analyzes the persistence of the so-called "legitimate defense of honor" as an argumentative strategy used in crimes of passion tried by Brazilian jury courts, despite its complete absence from the legal system. Throughout the twentieth century, this thesis was repeatedly invoked to justify homicides and attempted homicides against women, and it continued to influence judicial decisions even after the 1988 Constitution and the legal recognition of femicide as a qualified homicide. Its persistence is rooted in patriarchal cultural values that associate male honor with control over female behavior, shifting blame from the perpetrator to the victim. This study uses qualitative and descriptive bibliographic research to examine the historical evolution of legitimate defense, its adaptation as a justification for violence against women, and its endurance within social and legal imaginaries. The findings reveal that, although extralegal, the thesis has contributed to the normalization of gender-based violence and to recurring practices of victim-blaming. In March 2021, the Federal Supreme Court prohibited its use in jury trials, recognizing its incompatibility with constitutional principles such as human dignity, equality and the right to life. This ruling is an important legal milestone; however, its effectiveness depends on social dissemination and on the broader cultural transformation needed to eliminate arguments that legitimize femicide.

Keywords: Femicide. Self-Defense of Honor. Qualified Homicide.

RESUMO

O presente artigo analisa a permanência da tese da legítima defesa da honra como argumento utilizado em crimes passionais julgados pelo Tribunal do Júri, apesar de sua ausência no ordenamento jurídico brasileiro. A defesa da honra, amplamente mobilizada ao longo do século XX, continuou influenciando decisões judiciais mesmo após a promulgação da Constituição Federal de 1988 e a tipificação do feminicídio como qualificadora do homicídio. Essa permanência decorre de valores patriarcais que vinculam a honra masculina ao controle do comportamento feminino, transferindo à vítima a responsabilidade pelo crime sofrido. A pesquisa, de caráter bibliográfico, adota abordagem qualitativa e descritiva, examinando a evolução histórica da legítima defesa, sua apropriação como justificativa para homicídios de mulheres e sua recepção no imaginário social. Os resultados indicam que a tese, embora extrajudicial, operou como instrumento de naturalização da violência de gênero, reiterando práticas de culpabilização da vítima e relativização da vida feminina.

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Ressalta-se que, em março de 2021, o Supremo Tribunal Federal proibiu expressamente o uso da legítima defesa da honra em plenário, reconhecendo sua incompatibilidade com os princípios constitucionais da dignidade da pessoa humana, da igualdade e do direito à vida. A decisão representa marco fundamental, mas sua eficácia depende da disseminação social da vedação e da contínua desconstrução cultural que sustenta discursos legitimadores do feminicídio.

Palavras-chave: Feminicídio. Legítima Defesa da Honra. Homicídio Qualificado.

RESUMEN

Este artículo analiza la persistencia del argumento de defensa del honor en casos de crímenes pasionales juzgados por el Tribunal del Jurado, a pesar de su ausencia en el sistema jurídico brasileño. La defensa del honor, ampliamente movilizada a lo largo del siglo XX, continuó influyendo en las decisiones judiciales incluso después de la promulgación de la Constitución Federal de 1988 y la clasificación del feminicidio como circunstancia agravante del homicidio. Esta persistencia proviene de valores patriarcales que vinculan el honor masculino al control del comportamiento femenino, transfiriendo la responsabilidad del delito sufrido a la víctima. La investigación, de naturaleza bibliográfica, adopta un enfoque cualitativo y descriptivo, examinando la evolución histórica de la legítima defensa, su apropiación como justificación del homicidio de mujeres y su recepción en el imaginario social. Los resultados indican que el argumento, aunque extralegal, operó como un instrumento para la naturalización de la violencia de género, reiterando prácticas de culpabilización de las víctimas y relativizando la vida de las mujeres. Cabe destacar que, en marzo de 2021, el Supremo Tribunal Federal de Brasil prohibió expresamente el uso de la legítima defensa del honor en las sesiones plenarias, reconociendo su incompatibilidad con los principios constitucionales de dignidad humana, igualdad y derecho a la vida. Esta decisión representa un hito fundamental, pero su efectividad depende de la difusión social de esta prohibición y de la continua deconstrucción cultural que sustenta los discursos que legitiman el feminicidio.

Palabras clave: Femicidio. Legítima Defensa del Honor. Homicidio Agravado.

1 INTRODUCTION

The social permanence of the thesis of the legitimate defense of honor, even if devoid of legal foundation, reveals the strength of cultural values that have historically shaped the social perception of gender violence in Brazil. This argument, used recurrently in plenary sessions of the Jury Court throughout the twentieth century, associates male honor with the control of female conduct, allowing feelings such as jealousy or affective frustration to be interpreted as moral – and often legal – justifications for the practice of homicides against women. Although the Federal Constitution of 1988 expressly affirmed equality between men and women, and although several subsequent legislations have reinforced the protection of women's life and integrity, the social imaginary continues to be permeated by patriarchal patterns that make it difficult to overcome this discourse. As recent studies on gender violence have observed, the legal culture still coexists with remnants of a model that tolerates male action based on possession and control, elements that have historically supported the thesis of the defense of honor.

The case that occurred in Nova Era, Minas Gerais, in 2017, shows this permanence. Despite the evidence in the case, the defendant was acquitted by the jury on the grounds that he had acted to protect his honor, allegedly threatened by the end of the relationship and by a message found on the victim's phone. The controversy reached higher courts and, in 2020, the Supreme Court upheld the jury's decision, reinforcing the sovereignty of this body. This episode allows us to inquire how the legitimate defense of honor continues to influence judicial decisions, even in the face of the non-existence of the institute in the Penal Code and the clear expansion of the norms for the protection of women. In the words of Minister Barroso of the STF,

If we approve the acquittal of a serious femicide like this, it may seem that we are sending the message that a man, when he feels betrayed, can stab his wife, trying to kill her in legitimate defense of honor or whatever thesis can be defined. It does not seem that in the 21st century this is a thesis that can be sustained (ESTADO DE MINAS, 2020).

In this context, the objective of this article is to analyze the historical development of legitimate defense and the thesis of legitimate defense of honor, especially in the context of crimes of passion, examining its social acceptance and its use as an extra-legal justification. Methodologically, a bibliographic research with a qualitative and descriptive approach is adopted. The theme is relevant to the extent that the persistence of this argument reflects

tensions between normative advances and deep-rooted social practices, making it necessary to critically discuss its reproduction in the Jury Trial.

It should be noted that crimes against life, such as attempted murders and murders, are judged in Brazil by a jury made up of ordinary citizens and laymen with regard to legislation. In other words, their decisions are driven by the oratory of the prosecution and the defense, and, more than that, by the customs of society. Thus, the fact that the defendant could have been betrayed, and defending his honor justified the attack, received greater weight. The jury disregarded Article 121, paragraph 2, items VI and VII of the Brazilian Penal Code (CP), which classify femicide as qualified homicide, and which also explains that the reason for the condition of female gender involves domestic and family violence, and contempt for the condition of woman, data inserted in the CP by Law 13.104/2015 (BRASIL, 2015).

Methodologically, it was based on bibliographic research, maintaining a qualitative and descriptive approach. It is understood that the issue represents a relevant factor for society, especially because even in the face of Law 13.104/2015, the legitimate defense of honor supports the practice of homicide and attempted murder against women. Academically, this study is also justified, insofar as the use of the legitimate defense of honor has been shown to be conflicting both in the high courts, as well as with lawyers, judges of courts throughout the country and jurists. This is a subject that needs to be more widely discussed and analyzed.

2 SELF-DEFENSE: FROM HONOR TO CRIME OF PASSION

2.1 THE EVOLUTION OF SELF-DEFENSE IN SOCIETIES

Legitimate defense, as Assis (2003) explains, is strongly derived from Roman law, the time from which the first documents that point to this institute originate, the Digest and the XII Tables, demonstrating that the murder of a thief who invaded private property at night was allowed; similar content to the Law of Moses, contained in the Book of Exodus, chapter 22. Likewise, the ancient Anglo-Saxon laws also conceived the right of the victim to the death of the invader as legitimate defense. In Germanic law, the attacked or offended individual was also supported to react by causing the death of the aggressor or offender with an execution preceding the conviction.

On the other hand, in canon law, *moderamen inculpatae tutelae* begins to properly establish the nature of the institute of legitimate defense, observing it as an institute that could

attack charity and forgiveness, or, in other words, against divine law, as a function of the defense of material goods or honor. Christianity, however, did not intend to ensure any rights to the attacked or aggressors, but to establish limits for the appropriation of legitimate defense. Thus, the institute went through this moment that disturbed the understanding of forgivable act and individual legal right. The defense of an unjust aggression is understood as a culpable action, even if unpunishable, neutralizing to a large extent the legal feeling and making legitimate defense an unnecessary crime (ASSIS, 2003).

After the Medieval period, the Germans resumed the provisions of the Digest and Roman law, and in the Austrian Code of 1803, it was determined that in case of risk of unjust harm against himself, his relatives or fellow citizens, the individual had the right to oppose and react, as long as there was no possibility of resorting to public force at the time. Other codes around the world began to include self-defense as a right. In Latin America, in 1830, Brazil was the first country to include the institute in its code (ASSIS, 2003).

After all the ideological transformations around self-defense, today it is understood that

The need for the individual to legitimately defend himself arises from the impossibility of preventing (actual) or preventing (imminent) unjust aggression and of invoking and receiving protection from public authority as a citizen, since only the State has the right to punish and prevent the consequences of the commission of a crime. [...] The legal institute of self-defense is a cause of justification excluding illegality (Article 23, II, of the Penal Code). Through it, the individual is granted the ability to self-defend himself against the aggressor. It is the conduct of the aggressor and the reaction of the aggressor that will determine the extent and limits of legitimate defense (ASSIS, 2003, p. 19-20).

However, it should be clarified that just defense means acting with the objective of avoiding imminent unjust damage; that is, to replace an unjust damage (avoided) with a fair damage (caused), which leads to the understanding, as Assis (2003) points out, that the just damage cannot be greater than the unfair. Thus, the individual who defends himself knows the unjust situation and shows a need for repulsion before the offense is consummated, which is completely different from acts of revenge, whose action is subsequent to the offense or aggression. Therefore, self-defense "cannot be exercised to justify a consummated act, since there is no legitimate defense against past or future aggression. Once this has occurred, the conduct of the victim is no longer preventive" (ASSIS, 2003, p. 21). In this sense,

When examining the use of self-defense, the judge, within his flexibility, must demand moderation of the defense within the limit of its necessity, thus reinforcing the necessary antecedent of proportionality between the offense and the defense. In the assessment of self-defense, all circumstances must be considered. However, it is above all in the light of necessity and moderation that the necessity of violence and the impossibility of avoiding it must be assessed. If there is no need for defense or any other means to achieve the protection of the property, without the need to take the life of the aggressor, in fact, defense is not considered legitimate (ASSIS, 2003, p. 25).

Based on what has been exposed, Capez (2013, p. 309) states that "in principle, all rights are susceptible to legitimate defense, such as life, liberty, physical integrity, property, honor, etc.", which demonstrates that it is not under any circumstances a matter of discussing whether or not it is possible to use legitimate defense due to the honor of the individual, or any of the other points mentioned, but it is a matter of analyzing the proportionality between the offense and the repulsion. The author adds: "To this extent, the offended party, for example, may not, in defense of honor, kill the aggressor, in the face of the manifest absence of moderation" (CAPEZ, 2013, p. 309). It should be remembered that "violence, in all its forms, disrespects the fundamental rights of the human being, without which man is no longer considered as a subject of rights and duties, and starts to be seen as a pure and simple object" (ALMEIDA, 2010, p. 6).

2.2 THE DEFENSE OF HONOR AND MARITAL RELATIONS

Starting from this context of the defense of honor, Assis (2003) declares that honor is an individual value, based on ethical and moral principles about dignity, appreciation (subjective values) and reputation (objective values) that is built in society. This value is important to the individual, but mainly it matters to him how society sees honor in him, how honorable he is, which provides him with a confirmation of his own image. Honor ends, so to speak, by committing itself to the presence and testimony of others. In addition

Honor also has a general structure revealed in the traditional values of each culture, where society and individual dictate the conduct susceptible to approval or disapproval. If, from the ideals of society, the individual takes for himself the standards of these as honor, reproducing them and serving as an honor rendered by society, this, in turn, provides the synthesis of everything to which the individual aspires, which is the preference for a given form of conduct. However, when honor produces a link between the ideals of society and their reproduction in the conduct of the individual, a judgment of fact occurs. It means that it makes certain what was contingent through the psychological aspect, which will force the individual to act with all the perfection

that is expected. In addition, the social aspect will link the ideal standard with the standard lived in a given culture (ASSIS, 2003, p. 31).

It should be remembered that the legitimate defense of honor is not addressed in the Brazilian PC. In terms of self-defense, only Article 25 is included: "Self-defense is understood to be one who, using the necessary means moderately, repels an unjust aggression, actual or imminent, to his or her own right or that of another", wording given by Law 7.209/1984 (BRASIL, 1940; 1984). In other words, in addition to the fact that the CP does not include a supposed defense of honor, it is clear that it is applied to current or imminent unjust aggression, not in the past, but, above all, the importance of using moderate means of defense stands out.

The defense of honor is a very subjective issue, especially because it involves values already mentioned, linked to cultural groups, social positions, gender and time issues, modes of conduct imposed in society, but often such impositions are not included in the legislation, thus being without legal value, as is the case of adultery, which since 2005 is no longer included in the Brazilian CP, according to Law 11.106/2005 (BRASIL, 2005). Committing adultery, Article 240 of the CP, could result in detention from fifteen days to six months, as established by Decree-Law 2.848, of 1940 (BRASIL, 1940).

Crimes against honor in the PC are slander, defamation and injury, and are not related to adultery or marital relations. Despite all this, it must be admitted, as Assis (2003, p. 33) pointed out, even before the extinction of the article that punished infidelity, that "it is quite true that defending conjugal honor with the death of the offender (unfaithful spouse) consists of an enormous act of suppression of a greater good, in favor of a lesser good: life for honor". Assis (2003, p. 31) adds:

Until recently, the honor of the woman was confused with that of the husband, consisting of the double moral standard. Male and female honor was based on different concepts, without any standard of equivalence. Today, however, both women and men exercise the right not to share their honor with another person. They have individual honor and unrelated to the honor of the other. This equality of rights is guaranteed by the Federal Constitution and well accepted by today's society. For this reason, for several decades, the Public Prosecutor's Office has been fighting in the Jury Court, the thesis that the woman, with her unfaithful behavior, tarnishes the honor of the man, giving him the right to take his life.

In this context, as Paiva and Silva (2014) explain, the legitimate defense of honor in cases of passion is based on the ruse of lawyers who, before the jury, appeal to the



justification of the crime, seeking the transfer of guilt from the defendant to the victim, guaranteeing impunity through prejudices of times in which the morality of women implied the morality of men, its possessor. Since there was no equality between the genders, as the husband's property, the wife's acts corresponded to offenses or praise for the man. Male conduct received tolerance for adultery, but this benevolence did not reach women, precisely because they were the property and responsibility of men. In this extremely patriarchal context, murdering the adulterous woman corresponded to defending male honor, and violent acts and crimes of passion were morally and socially justified. This social view of women culminates in the data presented by Santos (2019, p. 19):

According to the 2015 Map of Violence – Homicide of Women in Brazil, the homicide rate of women in our country, between 2006 and 2013, increased by 12.5%, reaching 4.8 homicide victims per 100,000 women. In 2013, 4,762 homicides were recorded per year, which represents an average of 13 murders per day. Another important fact is that Brazil, compared to other countries, is in 5th place in a ranking of violence against women.

Santos (2019), in turn, points out that the objectification of women is a social issue assumed since ancient times, including in this perception the tradition of dowry, which, although it is already extinct in Brazil, is still in force in other countries and cultures. The bride's father was to remunerate the chosen groom with a dowry so that she would be accepted and received by her future husband, becoming, from the marriage, his property. The absence of the dowry left the woman at risk of ending her solitary life, a true outrage in other times. Throughout the history of colonial Brazil, men had the right to murder their wives and lovers if they caught her in adultery, a legitimacy conferred by the Portuguese Afonsine, Manueline, and Philippine Ordinances, as Silva (2020) points out.

This idea of the defense of male honor was perpetuated in Brazilian society and in many other places in the world. Silva (2020) adds that in 1917 the first Brazilian Civil Code was published, but already before it, in the Imperial and Republican Constitutions, even if everyone was equal before the law, this reality of equality did not apply to marriage and women's lives.

The subordination of women, then, to male decisions profoundly marks this type of sexist social behavior, in which it is understood that women are devalued and that even in the face of domestic violence, they should be subject to their husbands. This perspective culminated in the acceptance that crimes committed against women are justifiable, or at least

motivated by the love of the partner and some unacceptable behavior of the partner, which led him to extreme measures, based on the assumption that the woman's love should be resigned and established from self-sacrifice (SANTOS, 2019).

According to Eluf (2007, p. 167) "the mere mention of the thesis of legitimate defense of honor offends all women, by treating them as a male 'object of use'". As the author points out, in Brazil, the Doca Street case should be highlighted, which occurred in December 1976, when Raul Fernandes do Amaral Street murdered Ângela Diniz with three shots in the face and a fourth in the back of the head, having been initially acquitted due to the fickle behavior of the victim - suggestively nicknamed as the "Panther of Belo Horizonte" -, and her provocations towards the defendant, leading to the suppression of his senses out of love and jealousy.

Also addressing the Doca Street case, Santos (2019) adds that the defendant was applauded during the trial, and that his lawyer brought Angela's life to the jury, presenting her as promiscuous and a woman who deserved to die for her voluptuousness and sensuality. In the first trial, Doca was sentenced to two years, with the right to conditional suspension, which means he would not be arrested. After the second trial, Doca was sentenced, for aggravated homicide, to fifteen years in prison and here it is necessary to warn about a true insurrection of the incipient Brazilian feminist movement, which with an efficient campaign to draw attention to the second trial, coined the *slogan* "who loves, does not kill", which brought a strong influence on the narratives, arguments and decisions of the second jury in the case. However, it is important to remember that the legitimate defense of honor was widely accepted in the Brazilian courts until at least 1993, when the jurisprudence itself began to move in another direction.

Returning to the social role and cultural values in the Doca Street case, in its second trial, these aspects become significant because the prosecution then adopted the slogan "Who loves does not kill", as said, a motto widely used by feminists of the time, generating a movement that culminated in Street's conviction. We see how culture or the change in it interferes in the direction of judicial decisions, over juries. In this sense, Eluf (2007, p. 165) adds:

It has always been clear that the legitimate defense of honor was a ruse. The lawyers knew, perfectly, that no law in Brazil spoke of this type of self-defense, but the jurors, laymen that they are, would not decide based on the express text of the law, but according to their cultural values.

Capez (2013, p. 309), in the same direction, points out:

In the case of adultery, nothing justifies the suppression of the life of the adulterous spouse, not only because of the lack of moderation, but also because honor is an attribute of a very personal order, and cannot be considered outraged by an act imputable to a third party, even if he is the wife or husband of the adulterer.

Eluf (2007, XIII) adds that "the crime of passion is usually a reaction of the one who feels he 'possesses' the victim". As it was the most common thing for the man to support the woman financially, his feeling of possession, which expanded to her sexual life, gave him the right to murder in defense of his honor, if adultery was committed, or even if there was such a suspicion. It is important to emphasize that the same prerogative did not belong to the woman. In any case,

In all moments of change, whether by force, such as the French Revolution, or in quieter times, such as the Industrial Revolution, movements are born that seek to plead for women the extension of the rights granted to men, defending the thesis of equality of the sexes. However, these movements suffer resistance, a fact that prevents them from being fully carried out. These blockages occur, in large part, due to the prejudice that still reigns in the sexist society, which still insists on diminishing the dimension of the citizen woman, in order to highlight her condition as mothers (ASSIS, 2003, p. 10).

According to Toigo (2010), passionate homicides found a justification as private revenge based on the conception that such a crime derives from passion and love, jealousy and the possession of another human being as if it were an object, which leads to the consideration of the justification of the crime by moral and psychological paths. In the oldest legislations, a betrayed and passionate spouse would have the right to take the life of the betrayer. One kills for love.

In the same vein, Santos (2019) states that machismo corroborates this type of homicide and the elimination or attenuation of the guilt of the defendants, especially because it quite often happens that the jury is made up mostly of other men, and it should be understood that until recently the legislation itself exempted women from the possibility of being jurors. That is, in a sexist and patriarchal society that saw women as the property of men, when they committed a crime, even though the legislation was already turning to the mitigation of this idea of property and the right to take the life of their wives, those who committed the crime were judged by other men, conferred with the same customs and

thoughts, namely, that their wives also belonged to them and, equally, if that situation occurred in their lives, they would also have the right to defend their honor and dignity, tainted by the fickle attitude of the woman.

Paiva and Silva (2014) point out that the legitimate defense of honor is an authorization to kill, granted by the State itself, understood from the fact that women's acts can attack men, which drives them to defend themselves, or to defend their honor, even if for this defense women's rights are erased. The authors classify this type of interpretation as an aberration arising from human will, capable of offending, without just cause, the rights of others. When it comes to passion, when a crime is committed, it is derived from hatred, revenge, jealousy, frustration, and not from love, and there is no nobility in the criminal conduct.

For Toigo (2010), the crime of passion and the legitimate defense of conjugal honor in Brazil have their origins in Portugal. Although it was not a legally recognized legislation, the husband would have the right to kill his wife if he caught her in adultery, as has also been pointed out previously by Silva (2020); and the exclusion of illegality of the Brazilian CP of 1890, which affirms the disturbance of the senses and intelligence, became a great strategy of defense lawyers to exonerate defendants of crimes of passion.

In the 1940 CP, the exclusion of illegality was eliminated, but in cases of crimes of passion, the category of privileged homicide emerged, which reduced the sentence of the convicted, a penalty that corresponded to manslaughter, and when it came to a first-time offender, the sentences applied were two years. It should be noted that at this historical moment, equality between men and women was not yet constitutional, and inequality made jurors accept, "without much effort, to forgive criminal conduct" (ELUF, 2007, p. 165).

Eluf (2007) states that the thesis of the legitimate defense of honor is no longer accepted in the courts, while Toigo (2010) points to the conflicts that exist between those who accept it as a right, given that honor is linked to human dignity and, therefore, a fundamental right. Eluf (2007, p. 199) reinforces that the "legitimate defense of honor is unconstitutional, in view of the equality of rights between men and women guaranteed in the Federal Constitution of 1988 – article 5 – and can no longer be alleged in the plenary of the jury, under penalty of incitement to gender discrimination", especially because it has already promoted the acquittal of numerous passionate murderers. Paiva and Silva (2014, p. 72) contribute: "Even discredited, the Thesis of Legitimate Defense of Honor in crimes of passion is still raised in the legal environment". The authors continue: "the Thesis of the Legitimate Defense of Honor has generated energetic discussions regarding its applicability. Today, this

argument that favored so many defendants is in disuse, although there are still those who try to use it" (PAIVA; SILVA, 2014, p. 65).

2.3 THE LATEST EVENTS REGARDING THE LEGITIMATE DEFENSE OF HONOR

As stated at the beginning of this work, the Court of Justice of Minas Gerais and the Superior Court of Justice interfered in the jury's decision on the case of Nova Era, Minas Gerais, understanding that the acquittal was illegitimate, a topic that reached the STF, resulting in 2020 in the maintenance of the acquittal of the defendant who had struck three blows against his ex-partner. The defense had used the argument of legitimate defense of honor. However, Rosa Weber, Marco Aurélio Mello and Dias Toffoli considered it unconstitutional to go against the jury, contrary to what Alexandre de Moraes and Justice Barroso believed, who pointed out that allowing such a sentence perpetuated femicides and other crimes against women, also disrespecting the constitutional legacy of equality and the right to life.

In February 2021, Dias Toffoli, despite having upheld the previous decision of the STF, granted a precautionary measure in order to make the use of the legitimate defense of honor unconstitutional, and stating that the legitimate defense of honor is not legitimate defense and, therefore, does not accept the exclusion of illegality, presented when it is intended to repel an unjust or imminent aggression. Alleging that it is up to the State to create mechanisms capable of curbing femicide, Toffoli claimed: "Anyone who practices femicide or uses violence, with the justification of repressing adultery, is not defending himself, but attacking a woman in a disproportionate, cowardly, and criminal way" (CONJUR, 2021).

In March of the same year, the plenary of the STF classifies the legitimate defense of honor in cases of femicide as a violation of the constitutional principles of human dignity, protection of life and gender equality. The plenary of the STF unanimously prohibited the use of the legitimate defense of honor in Brazilian courts, a decision that endorsed Toffoli's injunction. According to Costa (2021):

According to Justice Dias Toffoli, in addition to being an "atechnical and extra-legal" argument, the thesis is a "cruel stratagem, subversive of the dignity of the human person and the rights to equality and life" and totally discriminatory against women. Toffoli also adds that it is a "hateful, inhumane and cruel" argumentative and rhetorical resource used by the defenses of those accused of femicide or aggression against women to impute to the victims the cause of their own deaths or injuries, "contributing



to the naturalization and perpetuation of the culture of violence against women in Brazil."

As the STF adds, "to prevent the judicial authority from acquitting the agent who acted moved by jealousy or other passions and emotions, the rule of article 28 was inserted in the current Penal Code, in the sense that emotion or passion does not exclude criminal imputability" (STF, 2021). Toffoli points out: "adultery does not constitute an unjust aggression capable of excluding the anti-legality of a typical fact, so any violent act perpetrated in this context must be subject to the repression of criminal law" (MEDIDA CAUTELAR 779, 2021, p. 9), and, therefore, in addition to the legitimate defense of honor not fitting into the context of marital relations, it is only part of an anti-legal and extra-legal argument used in Brazilian jury trials as part of a cruel argumentative resource that perpetuates violence against women.

In other words, on March 12, 2021, the STF determined the prohibition of the thesis of legitimate defense of honor in cases related to violence against women, as an argument to acquit or reduce the defendant's sentence. What is expected now is that this prohibition is, in fact, complied with in the Brazilian legal sphere.

3 FINAL CONSIDERATIONS

Has the law followed social evolution? According to the Federal Constitution, men and women have equal rights, which goes against the thesis of legitimate defense of honor in cases of passion, since this institute implies the woman as the property of the man, which, in turn, would bind the honor of both. To understand, currently, that men kill to defend their honor when they feel betrayed by women, means ignoring this constitutionally proposed equality.

It is known that there have been social movements that have achieved gender equality since the 70s and 80s, culminating in the promulgation of the Federal Constitution of 1988. Since the Doca Street case, which really socially transformed the issue of crimes of passion in Brazil, and especially after the manifestation of equality in the Magna Carta, the topic has been a point of discussion among magistrates in all instances. However, none of this prevents or reduces crimes of passion in the country.

What can be seen from the perspectives of commentators and scholars is that the legitimate defense of honor emerged with very old societies, but it is no longer a tool of defense, which has already been mitigated. However, as pointed out at the beginning of this

article, the case of Nova Era, Minas Gerais, occurred in 2017, and the defendant was acquitted by the jury as a result of the arguments of the defense of his honor, demonstrating a very present social acceptance of the thesis. More relevant than that, in 2020 the Federal Superior Court upheld the verdict of acquittal. This indicates that the legitimate defense of honor is not something that can be considered as surpassed in the Brazilian legal sphere. In other words, a defendant was allowed to be acquitted under the allegation of the defense of his honor, ignoring evidence from the investigation and, more importantly, ignoring that it was not a matter of defending anything, but of revenge, since the relationship had ended a week before the aggression.

Self-defense is used when someone is attacked and defends himself to avoid greater harm against himself and/or others. In the case of Nova Era, the defendant went to his ex-partner. There was no aggression from her to make him defend himself. Furthermore, is it fair that the alleged honor of the defendant is more valuable than the life of the victim?

The decision of the Federal Superior Court was made due to the upholding of the jury's decision, and this decision clearly demonstrates how vulnerable society still remains regarding the acceptability of the thesis in question. Finally, although the legislation does not cover the legitimate defense of honor, and, in addition, enacts equality between men and women, Brazilian society is still marked by justified, legitimized violence against women. Even with the femicide law and the insertion of this crime as a qualified crime in the Brazilian CP, the crime of passion is still perceived as a misrepresentation of the defendant's conscience and intelligence, and the motto "killed for love" is still accepted in contrast to "who loves does not kill".

It is concluded that, even in the face of equality between men and women, established in the Federal Constitution of 1988, crimes of passion are still legitimized due to the defense of male honor, making the victim guilty of the aggression suffered, or, at least, acquitting the defendant; A situation that deserves greater discussions and greater dissemination in Brazilian society, so that there is a better understanding of the illegality of this argumentation before the jury.

In this context, it should be noted that in March 2021 the STF definitively prohibited the use of this institute, considering it unconstitutional. This decision derived from the fact that the courts assumed the perspectives that seemed best to them in each case, and it is also understood that the use of this argument to justify murders due to love profoundly influences many jurors, as noted at the beginning of this article. The STF's decision annuls

the legitimate defense of honor as a possible defense argument for the defendant, and it is hoped that from now on murders and assassination attempts will no longer be justified through love and jealousy, or the temporary loss of reason due to emotion. Such a decision must be publicized in society and widely discussed so that it can be guaranteed that, in fact, the naturalization of these aggressions is deterred from the Brazilian courts.

The analysis undertaken demonstrates that the thesis of the legitimate defense of honor, although lacking any legal support, has historically been consolidated as a rhetorical instrument used to justify homicides of women, especially in the context of affective relationships marked by gender inequality. Even after the Federal Constitution of 1988 and the creation of specific protection provisions, such as the Femicide Law, the influence of this discourse persisted in the Jury Court, revealing the strength of cultural patterns that relativize violence when practiced by men against their partners. The acquittal that occurred in the Nova Era case, in 2017, demonstrates that the formal overcoming had not been accompanied by sufficient social transformation to prevent extralegal allegations from continuing to produce concrete effects.

The unanimous decision of the Federal Supreme Court, in March 2021, which prohibited the use of the thesis of legitimate defense of honor in plenary, constitutes a relevant milestone in reaffirming that the protection of life, gender equality, and the dignity of the human person are principles incompatible with arguments that blame the victim and legitimize violent practices. However, the effectiveness of this decision depends on a broader cultural change, which involves the continued training of legal operators, the awareness of jurors and the social dissemination of the prohibition established by the STF. It is concluded that only the combination of institutional advancement and social transformation can prevent discriminatory practices from continuing to sustain justifications for femicides in the Brazilian legal scenario.

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