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**CAPITU FOR ALL WOMEN AND ALL WOMEN FOR CAPITU:
SOCIETY'S OBLIQUE AND SLY EYES
ON THE FEMALE SUBJECT**

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ABSTRACT: Capitu is one of the main characters created by Brazilian author Machado de Assis. In this analysis, the character is able to bring law and literature closer, as she gives rise to a reflection on the role of women in society. This paper aims at showing how Brazilians have culturally developed a sly and cunning view of the female subject, which culminates in high numbers of domestic violence and femicide. Also, the investigation seeks to understand this cultural issue in Brazil, which is one of the greatest violations of women's rights. The method used in this research is analytical-interpretative.

KEYWORDS: Capitu; femicide; law and literature; Machado de Assis; women.

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1 INTRODUCTION

Given the necessary poetic license, this paper borrows its title from an expression used in *Dom Casmurro*³, by Machado de Assis⁴. However, it pays homage to the novel, not to the character-narrator Bentinho, Dom Casmurro himself⁵, as he has always had his locus of speech granted. However, Capitu, the main female character and the central role for literary analysis purposes, is completely submitted to Casmurro's arguments, as the whole plot is restricted to his perspective of the story.

We are actually referring to the narrative as “Capitu”, since this should have been the title of the novel. Dom Casmurro himself says he could not think of a good title for his story⁶, and he clearly falls, again, in the traps of his vain behavior, not seeing that the story he is telling is actually about Capitu. So much so, the main adaptations⁷ of the novel for TV, cinema and theater are called “Capitu”, instead of “Dom Casmurro”.

The Brazilian Literature classic, narrated by the character Dom Casmurro, is one of the most acclaimed works by the immortal Machado de Assis. The author is very astute when describing a love story of a boy who was to become a catholic priest and a girl who was beyond her time.

³ One of the main works by Machado de Assis and consequently of Brazilian literature, originally published by Garnier Publications, Rio de Janeiro, 1899.

⁴ Machado de Assis (Joaquim Maria Machado de Assis) was an author, journalist, columnist, novelist, poet and playwright. He was born in Rio de Janeiro, RJ, on June 21, 1839, and also died in Rio de Janeiro, on September 29 1908. He is the founder of chair n°. 23 of the *Academia Brasileira de Letras – ABL* (Brazilian Academy of Letters). He was an old friend and admirer of the great author José de Alencar, who had died about twenty years before the foundation of ABL, so it was natural that Machado chose the name of the author of *O Guarani* as his patron. He occupied the presidency of the Academy for more than ten years, which also came to be called *Casa de Machado de Assis* (The House of Machado de Assis) (ABL, [undated]).

⁵ Dom Casmurro is the character narrator of the novel: “Do not consult dictionaries. Casmurro is not used here as people usually understand, but as a self-absorbed, quiet man. Dom is an irony, as an aristocratic title” (Assis, 2008, p. 7, translated).

⁶ “I was neither able to find a better title for my story; if I do not come up with a better one until the end of the story, this one will do. My friend, the poet from the train, will be aware I do not hold a grudge. And with a little effort, as the title was created by him, he will be able to say the whole work belongs to himself. Some books have only this from their authors; others, not even the title” (Assis, 2008, p. 7, translated).

⁷ TV Series: *Capitu* (based on *Dom Casmurro*, by Machado de Assis). 2008. Produced by César Lino. Adapted by Euclides Marinho with Daniel Piza, Luís Alberto de Abreu, and Edna Palatnik. Conceived by Rede Globo. *Capitu* (Adaptation of *Dom Casmurro* by Machado de Assis). Performed at Theater Raimundo Magalhães Júnior at Academia Brasileira de Letras in 1999. Directed by Marcus Vinícius Faustini. Feature Film: *Capitu* (1968) Directed, Written and Produced by Paulo César Saraceni. Based on the novel *Dom Casmurro*. Adapted by Lygia Fagundes Telles, Paulo Emílio Salles Gomes and Paulo César Saraceni (ABL, [undated]).

Until present days, the narrative makes readers curious everywhere in the world. The story of Capitu and Bentinho received several translations for many languages, as well as adapted versions for theater, cinema, and television.

Machado de Assis breaks the paradigm of women idealization, which was strong in his lifetime. Eighteen-century society saw the ideal female as shy, decorous, submissive, so the author creates a protagonist who violates those "good customs". That woman is Capitu, accused of corrupting a priest-to-be Bentinho, with her gypsy-like sensuality, with striking eyes, referred to as "oblique and sly".

Given the brilliance of the novel and its avant-garde female leading character, it is important to highlight the main event in the plot: the supposed cheating by Capitu. Bentinho, obsessively jealous of his loved one, starts thinking their son might not be his, but his best friend Escobar's. Hence the greatest literary mystery by Machado de Assis: the novel never confirms or denies this doubt.

Interpretation is fully up to the reader in order to answer whether Capitu cheated on Bentinho or not. This has been the topic of several debates, conversations and academic research works. The fact is that when the author decided not to confirm the cheating, as well as the whole character development of the character Capitu, serves as a sad metaphor of society itself. Capitu, as a woman, was criticized within the novel for her supposed behavior, and she also caused a social commotion for many readers of that generation, who considered her behavior wrong regardless of the doubt.

Art, especially literature, expresses the characteristics of a people, and a novel can be seen as a representation of the whole of Brazilian society at a given time and beyond, since the literary contemporaneity still causes a series of violations of women's rights. Thus, comes the problem, with the question of how much the Brazilian culture can be seen as an enormous women's rights violator. This matter comes to our mind when comparing the appalling femicide rates in Brazil nowadays and the way Capitu was represented in 1899.

So this paper has the main objective of demonstrating how Brazilians have culturally developed a sly view on women, which is reinforced by patriarchy and sexism, and which culminates in the high statistics of domestic violence and femicide⁸ around the country. The specific objectives are: to identify the importance of the link between law and literature as a means to better understanding the legal apparatus, to reassure women's rights, and to demonstrate how gender equity is still a daily struggle in Brazil.

The importance of this paper is justified by the constant need to develop research on violence against women in Brazil. Likewise, the link between law and literature should be strengthened due to that, since the legal environment is also represented in artistic creations, cultural products of society. Thus, the law must not be oblivious of the impact and importance of artistic production for the political resistance and the fights for the guaranteeing of rights⁹.

The method used is analytical and interpretative, as the analysis begins with literary reading and culminates in the legal reflection. It is based on the analytical-interpretative methodological model developed by Henriete Karam (2017), which highlights the artistic singularity as not a mere instrument, but one of the main aspects in a research on legal matters.

For Henriete Karam (2017, p. 835, translated), “grasping and applying literary writings in other knowledge areas – be it with investigative or with pedagogical purposes – requires an adequate theoretical, conceptual, and methodological apparatus”. Thus, the analytical and interpretative method is used hereby, with aims at respecting the work of art and its value, and the intention of extracting

⁸ The term “femicide” is used for all violent deaths whose victims are girls or women, regardless of their social class or economic status, race, color or ethnicity, culture, educational level, age, or religion – as also stated in Article 2 of Law 11.340 / 2006. They are also considered so regardless of regional origin or nationality, including foreign women living in the country. Thus, the concept's intention is to expand the judicial response based on the recognition of women as subjects whose right to life was violated due to their gender condition (Pasinato, 2016, p. 44).

⁹ It is also noteworthy that in Brazil the first works on law and literature were Machado de Assis studies, made by Aloysio de Carvalho Filho: *O processo penal* and *Capitu e Machado de Assis e o problema penal* (*The criminal process and Capitu and Machado de Assis and the criminal problem*) (Karam and Bernsts, 2017).

from literary analysis a bigger apparatus of elements that may become object of reflection and discussion for the law. Furthermore, this paper also uses bibliographic research methods, by means of reviewing pertinent previous publications and documents.

It is evident that all women have a little bit of *Capitu*, as they are victims of a sexist, oppressive society that approves discrimination and prejudice. The novel, released in 1899, portrays the society of its time. However, it also testifies to the fact that, even though the cultural view on women has progressed, it evolved too little. As *Capitu* rebels for the sake of all women, all women should rebel for the sake of *Capitu*, since the oblique and sly eyes said to belong to the character are, actually, those of the Brazilian society towards all women, even nowadays.

2 THE ROLE OF CAPITU AND THE BREAKING OF PARADIGMS – LAW AND LITERATURE IN *DOM CASMURRO*

Artistic manifestations, regardless of the artform, have the talent for resistance and rebellion. Art, as the law, is born within society itself, it is a cultural product, and it carries with it the characteristics of a people at a certain historical moment.

As contradicting as it sounds, law has for a long time remained distant from the population, and the problem of having access to justice¹⁰ is not only restricted to the difficulties of taking legal action, but also of understanding the laws and rights. Hence, artistic productions might be strong allies of the law when it comes to making justice available for all, since people understand their rights better when they get to know them via works of art.

Art lives, creates feelings. The law, on the other hand, is cold and dry, distant and sometimes inaccessible. Music, poetry, cinema, theater,

¹⁰ “The expression *Access to Justice* started to have its current meaning in the late 1970s. Before that, the expression was about the access to legal institutions of the government. In the Post-War legal speech, it is often used as the description for the purpose or the benefit of legal assistance, or even as the guarantee of equality before the law. However, in the late 1970s, the expression gained a new and broader meaning: the capability of using several institutions, of the government or extra-legal ones, in which a claimant can demand justice” (Galanter, 2016, p.18). See also: “fundamental requirement, the most basic of human rights, of a modern, egalitarian legal system that aims at granting, and not only proclaiming, the rights of all” (Capelletti and Garth, 1988, p. 12-13)” (Capelletti & Garth, 1988, p. 12-13).

literature, as every other artform, can reach the most varied human feelings, and a song on the radio might make one more aware of justice than a legal sentence ever would.

Vieira and Morais state that:

The texts and contexts of Law and Literature constitute a very rich, and (still) little explored dialectic relationship. Just as the law has repercussions in literature, the latter contributes to sharpen perceptions about emotions, feelings, liaisons, and, in the case of this text, to understand a little of society and the Law from the contributions of Literature. (Vieira and Morais, 2013, p. 46).

François Ost (2004) believes that literature is capable of giving back to law a cultural dimension that, throughout history, has been forgotten – or repressed –, so that it can be restored with the important role of social transformation maker.

The reduction of the law to just a set of norms, together with its distancing from other sciences, has provided a harmful isolation in the evolution of law as a science. For Schwartz (2006, p.63, translated), “the world of Laws is made up of words rather than Laws. Laws are preceded by verbs, syntactic constructions, morphology and semantics, all which make it possible to understand what one intends to communicate”.

So we understand that the resistance of the law and its practitioners to accept the contributions of other areas and sciences as essential for really reaching justice is oblivious of language and the way society works. That is so because the law has the sole purpose of communicating via language, and its main objective should be its understanding by society.

In the words of Míriam Coutinho de Faria Alves (2016, p. 169, translated), when studying the writings of Clarice Lispector, “the search for a deeper knowledge of the human condition is in the perspective of the legal research to demonstrate the links between law and literature”.

Artistic language expression can help one understand the law and the norms, of course, but it also reveals in the works of art the several desires, problems, and needs of the people. That is the case with *Capitu*, a literary character that represents a view of women from a given period in a given society, as described in *Dom Casmurro*.

According to Germano Schwartz (2006, p. 64, translated), “literature, as much as the law, mirrors social values and imagery,

expresses realities that communicate to the interpreter in a similar way in both areas”.

Facing the analysis methodologically proposed hereby, the social problems in the plot of *Dom Casmurro* become visible, especially regarding women and the character Capitu, who is responsible for breaking paradigms of women behavior in the nineteenth-century society. This is analyzed by Sueli Do Rocio de Lara (2006):

It can be said that Capitu is a showcase of women at the forefront, because, even if the nineteenth-century lady's prototype was that of the idealized woman in terms of delicacy and charm, with passive sexual traits, and emotionally unstable, she dismantles this model and gives evidence of liberation from these social and domestic issues. And she goes further, as the plot insinuates adultery, reinforcing the idea of moral frivolity and ethical crisis, even if it is the moral of the hero of the exception (woman). She breaks with the established order, delimiting a phase of heroes, love-fatality, nature-refuge, woman-diva in our historical-literary context. (Lara, 2006, p.48)

Thus, Capitu transgresses the pre-conceived social order. Due to that, she is sentenced to punishment in the plot and also by the reader audience, because of the supposed adultery she had committed. It is not our intention to discuss whether Capitu cheated on Bentinho or not, we'd rather show how irrelevant the answer to that doubt becomes, when we realize that the supposition was stronger than anything else since Capitu was a woman doing a historically unacceptable attitude for a lady.

Capitu, for allegedly committing an attitude that if performed by a man would be socially and culturally accepted, suffers the consequences of gender inequality. Bentinho's paranoid obsession with her is often disregarded, reinforcing the macho and patriarchal culture that tries to establish good women as shrouded in holiness. Capitu, being a woman, could not have a posture that was not consistent with socially established standards and, since she did not fit, she is classified as sly, with dangerous and oblique gipsy's eyes.

However, the literary work does not really address Capitu's slyness as a non-standard woman, but rather the oblique, dangerous, sexist, patriarchal and sly eyes of the Brazilian people, in still maintaining discourses that favor gender inequality, in which attitudes performed by

men are acceptable, however, when possibly done by women they are hypocritically rejected.

So, the leading female character is rejected simply for being a woman. She is accused of adultery – an action that could arguably be seen as morally questionable by many readers, as she did not fit the delicate, passive, lady-like attitude society expected of her. Women are always expected to be submissive, not transgressive, and when they come to act as is culturally forbidden for them due to their gender, what happens to Capitu happens with every woman: they are sentenced by society for the wrongdoing of not settling in, becoming a not-to-be-followed model of woman.

Thus, Capitu divided readers. Dom Casmurro said more about other people than about Capitu, signaling a worrisome path, always known and for a long time naturalized, the way they treat women in Brazil, as inferior beings in rights.

Nonetheless, it should be noted that this scenario is gradually changing, precisely because there is greater awareness and mobilization, not only at the national level, but also at the international level. This facilitates the breaking of paradigms, and extends the reach of human rights. This change has been observed since the moment social understanding has started to be perceived, according to Flávia Piovesan (2017):

There are no human rights without full observance of women's rights, that is, there are no human rights without half the world's population exercising, on equal terms, the most fundamental rights. After all, without women, rights are not of humans (Piovesan, 2017, p. 413).

Therefore, the mutual relationship of reciprocal contributions between literature and the law is reaffirmed, thus the title of this paper, which proposes the union of female subjects, women for women, Capitu for all and all for Capitu. This goes together with the ideals of the global movement "*HeForShe*"¹¹, created by the United Nations, with the purpose

¹¹ The *HeForShe* solidarity movement was created by UN Women to provide a systematic approach and a targeted platform through which a global audience can participate and become agents of change in order to achieve gender equality worldwide. This requires

of encouraging men to commit to gender equality actions. Thus, we understand in the light of the study here developed, that Machado de Assis, when creating *Capitu*, proposes a break of paradigms not only in terms of *SheForShe*, but also *HeForShe*, as he, a male writer of the nineteenth century, helps (perhaps unintentionally) the movement.

However, we prefer to think that this was one of the intentions that motivated the writer, to create *Capitu* not to be a victim, but to be an example of resistance, strength, recognition and representation, *Capitu* might have been created to fight¹² for all. Therefore, everyone must fight for *Capitu*, but not only women, men must join this cause, because gender equality is everyone's responsibility and duty.

3 CAPITU(S), THE CULTURE OF VIOLENCE, AND THE ROLE OF WOMEN IN BRAZILIAN SOCIETY

As already indicated in this study, women, since the beginning of times, have suffered from discriminatory stereotypes previously fixed in society. Certain roles, derived from a sexist and patriarchal social construction, make women fit certain attitudes and behaviors, different from those inherent to men.

In this sense, reflecting on the role of women in Brazilian society, the shock caused by *Capitu*, an enigmatic character who reflected, for example, wisdom and cleverness, is notable. Such characteristics are, even today, not easily attributed to women. However, still nowadays there is a

an innovative and inclusive approach that mobilizes people of all gender identities and expressions to be advocates and recognize the ways in which we can all benefit from this equality. *He for She* invites all people to walk together, as equal partners to create a shared vision of a world of gender equality and implement specific solutions, locally relevant for the well-being of all humanity. Available at: <http://www.heforshe.org/pt/our-mission>. Access: Sept. 02, 2018. See also: "UN women is fully *SheForShe*, but that is not enough. The size of the problem shows us that we have to diversify. We need men to be part of the solution because we need to reflect positive masculinities." PhumzileMlambo-Ngcuka (UN Under-Secretary-General and Executive Director of UN Women). Available at: <http://www.heforshe.org/pt/our-mission>. Access: Sept. 02, 2018.

¹² It is necessary to clarify that the term "Fight" is used in the sense of Fight for Recognition, explored by Axel Honneth: "Recognizing each other as a person of law means, today, in this aspect, more than it could mean at the beginning of the development of modern law: meanwhile, a subject is respected if he or she finds legal recognition, not only in the ability to be guided by moral norms, but also in the concrete property of deserving the standard of living necessary for that" (Honneth, 2003, p. 193).

culture based on the submission of women to men, with women being seen as mothers, homemakers, caregivers of children, while men are seen as family providers.

This scenario is explained by Beauvoir (2016, p. 24), according to whom there is a passiveness, which particularly characterizes the “female” woman, from the first years of her life. However, such passiveness does not consist of biological traits, but rather, it is a destiny that is prescribed to women by their educators and by society itself. This situation can also be understood based on the famous expression of Beauvoir’s (2016, p. 11, translated), “One is not born, but rather becomes, a woman”.

During the nineteenth century, Brazilian society underwent a series of transformations, among which, the rise of the bourgeoisie and the advent of a new (bourgeois) mentality, which restructured family and domestic experiences, reaching the so-called female activities. During this period, the birth of a new woman was witnessed in the relationships of the bourgeois family, marked by the valorization of intimacy, as well as motherhood. Particularities, such as a solid family environment, a welcoming home, educated children, a zealous wife for her husband and children and hindered from productive work, characterized the ideal of rectitude and probity (D’Incao, 2004, unnumbered).

Machado de Assis mentioned in his writings several of the Brazilian problems of the nineteenth century. About women, specifically, Machado de Assis created characters who piously played their expected social roles, but also other women characters who fought for independence. As for Capitu, she cared for her house’s expenses since her mother had died, she fought for her love for Bentinho, and then she asked for a divorce. She represents the great pinnacle of the new possibilities for women at the end of the century in Brazil (Paula, 2013, p. 29-31).

It turns out that, when we turn our eyes to Capitu, we do not see the figure of a passive, fragile or vulnerable woman, or the slightest trace of a person molded according to the behavioral pre-definitions established by

society. Instead, in *Dom Casmurro*, there is the image of a woman with strong personality, astute, proud, intelligent, advanced for her time.

As Luz Segundo points out (2017, p. 171), History, Literature and Law reveal themselves to be intertwined in a normative dimension constituted in the material reality and also in the social imagery, which makes it possible to expand the legal reflection. In addition, Rosário and Oliveira (2017, p. 539) explain that the approximation between law and literature is possible, because both areas have fictional discourses. Like literature, the law has an imaginary character, and represents the way in which society gets to know the behavior of its members. And, both in law and in literature, the fictional dimension of discourse reflects minimized possibilities, whose reality only tells what the writers inform.

Under this perspective of law and literature intertwining, in order to compare fiction and social reality, it is necessary to emphasize that the representation of the character Capitu is perceived from the conception and perspective of the narrator Bentinho, this that is, Capitu's representation is transmitted to us according to the appreciation of her deeds as portrayed by Bentinho. The fact is that, at the same time as Capitu's description reveals a strong woman, her construction, again, is under the perspective of the narrator Bentinho, who submits her to a social trial for allegedly cheating on her husband, which reflects the condition of subordination imposed onto women, even today.

In this sense, Alves and Ferreira (2015, p. 131) signal that the determinism about Capitu's supposed behavior, as well as her judgment without being given the right to defense and deliberation, consists of interpretations formulated by Bentinho about her actions, among which, allegedly cheating on him, while attesting, from another point of view, a cry of jealousy and pain from the narrator. The researchers also point out that certain segments of society are like Bentinho, a supposedly betrayed man, possessed by anger and jealousy – which helps strengthen the argument of women being sly. This kind of rationale goes together with the absurd ideas that women should remain within the domestic sphere, and they must obey their husbands, because when they are free, they are

“whores”, and that such type of women does not deserve justice protection.

It is important to highlight that, although the object of this study is based on the figure of Capitu, as a representative of Brazilian women, it should not be seen as a universal representation of women, especially because it characterizes the image of the white woman of the bourgeoisie. This is because, in addition to the harmful consequences resulting from gender inequality, countless women have to fight other daily problems, such as racism and transphobia, both clearly present in today's society. Thus, Capitu is a character of extreme importance and relevance for understanding persistent problems in society, however, it is essential to understand the fact that she does not universally represent all women.

In view of this, let us go back to the social judgment imposed onto Capitu, based on the excessive jealousy fostered by Bentinho. The rationale was actually in accordance with the legislation in force at the time, so it is necessary to ponder, based on the explanations of Chrysostom (2018, p. 404-405), that in the laws called *Ordenações Filipinas*, it was possible to find statements on women not being qualified to receive inheritance. That is, women were not seen as able to manage assets, and for a woman to be able to receive an inheritance, she needed a man to manage those assets. Men were also permitted to punish their wives, even with the use of sticks and stones, keeping moderation. Men were also authorized to kill their wives in the case of adultery, since it was seen as a crime of honor.

Regarding the legislation about women, the difference on how adultery was seen is abyssal when compared to nowadays, since the guilt was solely given to the woman and the lover. The married man was not even seen as a criminal in the event of murdering his wife and the lover (Davis, 2018, p. 184). Therefore, it is visible that the behavior seen as contrary to the expected created male disgust, which, hypothetically, was naturalized as a consequence of the woman's “deviant” behavior. Then, the so-called “honor crimes” emerged, in which the man seeks to do

justice by taking revenge against the people who did considered outrageous actions, in general, related to the cheating by the woman. The female subject was (always) the one to blame, even her own homicide, since the married man only committed it in order to keep his honor (Alves and Ferreira, 2015, p. 132-133).

The Penal Code of 1890 no longer typified homicide committed under the condition of total disturbance of the senses and intelligence. It was considered that certain emotional states, like the one caused by the discovery of a wife's adultery, were so intense that the husband could experience brief insanity, in which case he would not to be held responsible for his actions, nor suffer a criminal conviction (Eluf, 2007, p. 164).

During the validity of the mentioned Code, the so-called "crimes of passion" and the defensive theses gained strength. Adopted in "crimes of passion", the legitimate defense of honor was derived from an interpretive construction that aimed at favorable results for defendants. The law practitioners of the time were aware that such legitimate defense claims were not available in the legislation, however, in the Jury Court, composed of untrained judges, it was not usual to question the legality of a thesis. The jurors then voted based on their moral values, and the Judiciary proceeded with the precept of fulfilling the roles previously determined by the gender regime (Lima, 2018, p. 27-29).

The Penal Code of 1940 (in force today), in turn, removed the exclusion of illegality related to the disturbance of the senses and intelligence. However, in society remained the idea that the cheated man still had the right to kill the woman. The reasons that lead the so-called "passionate" murderer to commit the crime are more correlated with feelings of revenge, hatred, resentment, sexual frustration, vanity, evil narcissism, arrogance and selfishness than with the real feeling of honor. Honor is used in a distorted sense, relating to the sexual behavior of women, and is, in truth, in a translation of sexism, which defines the

fidelity and submission of women to men as a masculine right, required for social respectability (Eluf, 2007, p. 164-166).

In Brazil, an emblematic case was the murder of Ângela Diniz, on September 30, 1976, by her boyfriend Doca Street. At the first trial, the accused ended up being acquitted on the grounds of the legitimate defense of honor, which led to a mobilization of the feminist movement, with the slogan “one who loves does not kill”, in reference to the defendant’s statement that he had “killed for love”. The prosecution appealed the decision and, following a retrial, Doca Street was convicted. The crime in question constituted a notable change in Brazil, mainly in what concerns the social movements of women in the face of the so-called “crimes of passion”. Popular demonstrations were triggered and had important effects on the lives of women in Brazil (Mello, 2017, p. 90).

For Brazilian women, the 80s and 90s were extremely important for their history. In the 1980s, in the transition to democracy, there was, on political and regulatory levels, the formal recovery of female citizenship and democratic rights. The Federal Constitution of 1988 constitutes a political, institutional and legal framework, which reorganized the Brazilian system and established the adequacy of legal norms to human rights (Pitanguy et al., 2006, p. 11).

Women achieved progress in social matters and had their daily lives altered, domestically and in the public life. However, it is undeniable that some obstacles remain there and hinder the full citizenship advent for many Brazilian women. One of these obstacles is gender inequality in political and civil rights; in sexuality and reproduction; in poverty reduction and access to employment; in prison rights, among others. And all of these problems are bigger when it comes to marginalized races (Pitanguy *et al.*, 2006, p. 11).

Violence against women is due to gender inequality, precisely because of the way in which society and the roles available to women and men have been structured. Therefore, the task of reflecting on such cultural structures and giving a new meaning to the roles of men and women in the family context reveals itself as an immense challenge to be

faced in the twenty-first century. Besides that, gender violence is a wound that grows within the family itself, since the woman has been subjected to the commands of her father and husband, and limited only to domestic tasks and dedication to children, resulting in gender violence due to this subjugation (Vieira de Carvalho, 2018, p. 18-19).

Thus, it is worth noting that all men are violent, as they are encouraged to be brave, to show that they are *macho*, that is, masculinity reveals itself as a synonym for converting aggressiveness into aggression. Women, in turn, are motivated to accept the violations perpetrated by male partners, especially when the man is the provider of the material needs for the household. Therefore, it can be seen that there is an unfair structure, supporting gender inequalities (Saffioti, 1994, p. 460).

It is in the face of such circumstances that we see how important it is to strengthen the link between law and art, using the latter as an instrument, even for raising awareness and re-signifying socially and culturally built values. And, also in the context of violence against women, this scenario does not change, so that when analyzing *Capitu's* characteristics, it appears that women go far beyond the voiceless and relevant beings that the cultural heritage imposes.

It should be noted that, when it comes to the internal legal norms of different countries, the gender perspective did not use to be included. Violence against women was not recognized as a critical public health problem and an offense to their human rights, so that there was no response for reversing this situation based on discrimination. It was from the 1970s, and especially from the 1990s that, due to the commitment of feminist movements, the international community awoke to the need to provide a different treatment to the gender issue, in view of the enormous social challenges faced by women. In 1979, the United Nations approved the Convention on the Elimination of All Forms of Discrimination against Women. This was the first international human rights action to solely deal with violence against women (Gebrim and Borges, 2014, p. 60).

In this context, it is imperative to highlight and reflect on the lessons given by Santos (2013, p. 63), when he states that the majority of the

world population is not of subjects of human rights, but rather, a mere object of the human rights discourse. The struggle of women, indigenous people, people of African descent, victims of racism, gays and lesbians, has been marked in the last fifty years of recognizing of collective rights process. Nevertheless, such recognition is very contested and seems to be permanently at the point of being reversed. Social groups like these, because they are marginalized or discriminated against, cannot be adequately protected by individual human rights.

A brief explanation was made about the social role of women in Brazilian society and how such cultural predetermination, based on gender inequality, implies violence against women, emphasizing the construction around the character Capitu. It is now necessary to discuss some advances that have occurred in Brazil, regarding the confrontation of violence against women.

4 VIOLENCE AGAINST WOMEN IN BRAZIL AND IN LITERATURE – THE ROMANTICIZATION OF VIOLENCE

The maintenance of the social-cultural structure in the artistic context of world literature, including Brazilian literature, reveals that violence against women has been romanticized – or at least justified. “Love” and romanticism, in this aspect, build the figure of the aggressor, who despite mistreating, killing, raping and humiliating the woman, loves her, so that several female artistic representations have reproduced this system and ended up pushing backwards the process of deconstructing the oppression culture against women.

Capitu is an artistic paradox that contradicts art itself, by contesting how literature had represented the hitherto propagated woman stereotype, as a passive, submissive and supporting woman beside her male protagonist savior. Capitu reveals in Brazilian literature the power of choice possessed by women, who should not necessarily be “lady-like”, modest, and perfectly adapted to society’s impositions.

In this way, in view of this romanticization of violence against women in literature, we intend to demonstrate recent data that reveal the

rate of violence against women in Brazil, addressing, in contrast, legislative advances, such as the outbreak of Law 11.340/06 (Maria da Penha Law).

The Constitution of 1988¹³ expressively states that men and women are equal for the law, rights and duties, according to article 5, item I, breaking the patriarchal system that had prevailed in the Brazilian legislation, sometimes conditioning the conduct of women to the acquiescence of men. And, it was in this improvement scenario that Law nº 11.340/06, commonly known as “Maria da Penha Law¹⁴” was created (Fernandes, 2015, p. 16)

In 1983, Maria da Penha Fernandes was the victim of two homicide attempts by her, at the time, partner, in her own residence in Fortaleza. This case became a symbol of the combat against domestic violence suffered by women. Mrs. Fernandes was shot while sleeping, suffered an attempt of electrocution, and was severely hit and attacked, which ended up making her paraplegic, at 38 years of age (Mello, 2017, p. 52).

Maria da Penha’s case was submitted to the Inter-American Commission on Human Rights, which issued a condemnatory decision to the detriment of the Brazilian State, due to its negligence and omission, regarding domestic violence. Thus, on August 7, 2006, Law 11.340/06 was enacted, which, in an unprecedented way, brought mechanisms to restraint domestic and family violence against women, providing preventive, assistance and protective measures for women in situations of violence (Mello, 2017, p. 56).

¹³ The 1988 Constitution symbolizes the legal framework for the democratic transition and institutionalization of Human Rights in Brazil (Piovesan, 2017, p.416).

¹⁴ Maria da Penha Law – (Law 11.340 / 2006) UN Women supports actions to strengthen the law to prevent and hinder domestic and family violence and gives worldwide visibility to Brazil’s progress. Over a decade, UN Women supported the National Pact to Combat Violence against Women and the implementation of the National Policy to Combat Violence against Women through the Service Network for Women in Situations of Violence. As a partner of the *Mulher, Viver sem Violência* program, UN Women is committed to ensuring essential quality services for women across the country, developing a methodology to measure social and institutional tolerance to violence with a racial perspective, in addition to production data and analysis and the creation of an observatory of violence against women. Available on: <http://www.onumulheres.org.br/areas-tematicas/fim-da-violencia-contra-as-mulheres/acesso-a-justica/>. Access: Sep. 1, 2018.

Thus, as Bianchini (2016, p. 129) rightly points out, among the countless advances resulting from the creation of the Maria da Penha Law, there was the definitive fixation of gender discrimination and violence as modalities of human rights violations. It should be emphasized that it is only possible to talk about universal guarantees as long as women, as human beings and citizens, have their rights recognized with specificity.

The Maria da Penha Law, then, constitutes a significant political framework, as it deals with the fight for women's rights and the understanding of violence against women as a matter of public policies. Likewise, it is relevant legislation, with regard to the legal approach to gender violence, since it sets new levels for tackling such violence (Pasinato, 2015, p. 534).

However, unfortunately, even with the advance brought about by the enactment of the Maria da Penha Law, Brazil remains at critical levels of violence against women. This factor demonstrates the persistence of a historical heritage of sexism, and the consequent inferiority of women to men. Therefore, it is necessary to explain some data that demonstrate the peculiar and unfortunate reality of the Brazilian scenario.

According to the Map of Violence 2015, among 83 countries, listed according to data made available by the World Health Organization, Brazil occupies the fifth place where more women are killed, with a rate of 4.8 homicides per hundred thousand women. In addition, it appears that many of the women victims died within their own homes. This is because, considering that 48.2% of male homicides occur on the street, the percentage of 27.1% of female homicides that occur in their respective homes is relevant, a circumstance that proves the high domesticity of these deaths (Waiselfisz, 2015, p. 27-39).

Regarding violence against women, it is essential to make some considerations, even if they are brief, about femicide. In Brazil, femicide was introduced to the legal system, through the sanction of Law No. 13,104/05, under the responsibility of the Joint Parliamentary Commission of Inquiry on Violence against Women, as a qualifier for the crime of homicide. Femicide therefore consists of homicide committed

against women because of the condition of being female, that is, when it is due to domestic and family violence or contempt and discrimination against women. Thus, it is observed that, although the Maria da Penha Law has been of great relevance, as regards the struggle of women against gender violence, it has ceased to cover the most delicate development of such violence, that is, cases of death (Mello, 2017, p. 141-142).

From this perspective, as Gomes (2018, p. 4) points out, femicide translates into the violent death of women. Thus, speaking about femicide has consequences in demonstrating how such violence is never accidental or eventual, so that the facts are perceived as a phenomenon inserted in a social arrangement based on inequality, a factor that allows it to happen.

Considering that, according to the aforementioned Map of Violence 2015, of the 4,762 murders of women found by the Mortality Information System (*Sistema de Informações de Mortalidade, SIM*), in 2013, 50.3% of them were carried out by a family member, which allows portray the average of seven femicides per day, in the year cited, with an actor as a relative. In addition, 1,583 women were murdered by their partner or by a former partner, a circumstance that reflects the percentage of 33.2% of total homicides, which means 4 daily deaths (Waiselfisz, 2015, p.70).

It is also worthy to mention the research called “X-ray of femicide in São Paulo: it is possible to avoid death”, carried out by the Gender Center of the Public Ministry of the State of São Paulo. Out of the 364 complaints analyzed, in 66% of cases, femicide occurs inside the victims’ own residence. In addition, it was confirmed that 70% of the victims live together (or had lived together) with the criminals (MPSP, 2018, p. 1-11-16).

Still based on the research above, the substantial reason for the deaths, in intimate femicides (from an affective relationship context), consists of the separation or the request for a break denied by the aggressor, followed by cases of jealousy, sexism, and banal discussions. It should also be noted that, in one out of every four femicides, someone other than the woman was affected. In 26% of the cases studied, there were secondary victims, directly or indirectly, who suffered criminal

action. Such people are the victim's sons and daughters, mothers, sisters and brothers, neighbors, acquaintances, new partners, people who, in some way, had tried to aid women at the time of the crimes (MPSP, 2018, p. 17-18).

It is clear, when dealing with the substantial reasons for the deaths of women, that there is yet another link between the study proposed in this work and the narrative of Bentinho and Capitu. Bentinho, after the death of his best friend, began to nurture jealousy of Capitu, which led to erroneous and confused perceptions about reality.

It should not be left out that, as Fernandes (2015, p. 69) states, the usual killer profile in femicide is that of a self-centered, selfish person and, in many cases, with low self-esteem. They do not kill for love, but for a sense of possession and for reputation.

Capitu has spent years on the benches of academic courts to be tried for allegedly cheating her husband, which was never even proven. The *In Dubio Pro Reo* Principle was not used to her benefit, and Capitu was seen as a criminal by several academies, in which teachers and critics never glimpsed outside the image of the sly gypsy with oblique eyes, a portrait by the unbalanced mind of the possessive and jealous Bentinho (Figueiredo, 2018, p. 361-362).

Not only does Capitu occupy the place of a woman of the nineteenth century, characterized as an agent of transformation of herself and her own time, but she also remains alive by extension in every *Capitu* of the twenty-first century. These are women who take turns among the roles traditionally imposed on them and those who follow the revitalizing movements of the world, qualified by the deconstruction of the hierarchy between the genders or social roles experienced by the dominant behavioral paradigm of men over women (Alves & Ferreira, 2015, p. 137).

Over a hundred years after the publication of the novel *Dom Casmurro*, women continue to be victims of numerous types of violence (among which, femicide), which has been felt in the legal production of Brazil. Literature and the law, therefore, come together to corroborate the fact that violence against women is a cultural fact, an ardent detachment

from customs, tied to tradition and the way in which “male acting” has been shaped over time. Women continue to be subjected to social judgments and disdain. They are, in theory, born “cheaters”, even according to the Courts, when dealing with issues related to female morality (Alves and Ferreira, 2015, p. 137-138).

In view of all this discussion, the difficult task that demands efforts is evident, not only from the State, but also from civil society itself. The point is that at least this context of discrimination and inferiority, in which women still find themselves, is eased. Dealing with domestic violence is dealing with a matter that, more and more, deserves to be studied, reflected and debated upon.

That is why using art, which includes renowned literary works, like what happens in this paper, is to expand horizons of awareness and reach, so that people, even if not related to the field of law, understand that the inequality of gender must be tackled and reversed. Therein also lies the relevance in talking about *Capitu*, who broke paradigms, which today are still there, and at her time were even stronger. Thus, to speak of *Capitu* is to reflect on the female issue in a society constituted under the bias of sexism, which uses metaphors to describe it (Liporaci and Costa, 2012, p. 396).

5 FINAL THOUGHTS

In view of the elements developed in this analysis, we understand as necessary the process of symbiosis between law and other sciences, in deep interdisciplinarity. This way, the law can increasingly approach people and consequently develop itself further, thus breaking the barriers within which it has remained cloistered.

Given the legal interpretation of the novel *Dom Casmurro*, it is noticed that, culturally, Brazilian society maintains its sly and oblique eyes turned towards women. The data presented on domestic violence, femicide, and the issues of gender inequality demonstrate the maintenance of this sexist and patriarchal culture.

It is verified, then, that the cultural issue in Brazil is configured as one of the biggest factors for violations of the human rights of women. So the reaffirmation of these rights and the activism for gender equity must be a continuous agenda, materialized through policies and a network to deal with violence against women.

Thus, literature expressed itself as a cultural product, which outlines that any cultural change, breaking of paradigm, presupposes deeper transformations and actions. For this to happen, it is necessary to join forces, so that women and men fight together for the accomplishment of gender equity.

The non-observance of this cultural impact already shown in literature, as mentioned above, due to the sad contemporaneity of the work *Dom Casmurro*, culminates in the sad data of femicide and domestic violence that plague Brazil. It is visible that women still suffer the price of gender discrimination in the most diverse forms of violation.

It is necessary to realize, then, that the high rate of femicide in Brazil today is closely related to the way in which *Capitu*, a character from 1899, was represented and read. All the literary construction by the character *Dom Casmurro* portrays, as described, the social perception of women by society, demonstrating that the current data on femicide is no surprise. It only shows the vulnerability and the consequences of patriarchy, whether in 1899 or in modern times.

Another relevant issue to be restated is that the character *Capitu*, despite being a highly relevant literary figure, has limits of representativeness, since she is a white and bourgeois character, and the differences of individual women must be highlighted once the law acts differently for each of them. So it is necessary in future studies to analyze the difference between white and black women, upper and lower class, hetero and homo, cis and trans, due to issues such as racism, workers' struggles, lesbophobia and transphobia, in relation to metaphorical *Capitu*.

However, it was not our intention to state whether *Capitu* cheated on *Bentinho* or not, it is striking to note that the possible betrayal is in most perspectives a factor that condemns the character socially and

sometimes presupposes a justification of the behavior of Bentinho / of men. Hence, his psychological disorders are completely ignored, by naturalizing and victimizing a man who is always right, placing the woman with the blame for his passionate attitudes, when in fact, the occurrence of the cheating or not, would matter to no one but herself. Regardless of that, women they cannot continue to be killed or condemned for the “truths” of men. Women need to be heard, to become Capitus.

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