

UNIDAD EDUCATIVA PARTICULAR JAVIER

BACHILLERATO EN CIENCIAS

MONOGRAPH

**“APPLICABILITY OF THE LAW TO PREVENT, AND ERADICATE VIOLENCE
AGAINST WOMEN SINCE THE IMPLEMENTATION OF THE LAW IN 2018. PROS-
CONS-RECOMMENDATIONS”**

STUDENT:

MARIA PAULA YANEZ CARDOSO

ADVISER:

LCDO. NESTOR PEREZ

LCDA. PATRICIA SANCHEZ

THIRD OF BACCALAUREATE - COURSE A

2019 – 2020

Gratitude

To God, a fundamental pillar in my life, to the Javier Educational Unit for being an educational entity with a great academic contribution for my student life. To my tutors Lcdo. Nèstor Pèrez and Lcda. Patricia Sàncchez for their patience and wisdom that has been of great contribution to me, in the present investigative work.

Summary

Violence against women is an issue of yesteryear that has been dragging on for decades usually comes from dysfunctional homes, of low academic level, with limited economic resources, but it is not ruled out that today aggression against female groups is an eminent danger we find in our daily life.

We, as Ecuadorians, are in an underdeveloped country, within which palpable phenomena such as alcoholism, lack of employment, drugs have developed; These phenomena that have triggered attacks of all kinds but having a greater impact on violence against women, we witness daily through the media of the types of palpable violence in our city and country.

One of the cities with the highest population in Ecuador, such as Guayaquil, undoubtedly has the highest rate of criminal phenomena, without neglecting that one of its biggest problems is violence against women; that repeatedly trigger major crimes that can lead to femicide, which is one of many criminal types sanctioned by the legal norms of Ecuador.

As citizens, do we take the necessary measures to prevent violence? Do women denounce in time to the competent authority that we are victims of violence? Is the Ecuadorian State within its powers that corrective measures have been taken to eradicate violence? These and other questions are our daily questions, which probably do not have an adequate answer that allows us to identify the problem and from it look for the applicable solutions for the benefit of women.

The research work is focused on determining the notable causes of violence against women, as well as establishing what corrective measures could be taken not only by the State but also by us who are members of a growing society.

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Introduction

The present research context carried out on the *Applicability of the Law to Prevent, and Eradicate violence against women since its validity in 2018. PROS-CONTRA-RECOMMENDATIONS*, is undoubtedly of social interest at the level of the Ecuadorian territory because all the members of a society descend from a family nucleus in which in one way or another more than eighty percent of the inhabitants have suffered some type of violence that is derived from the paradigms established since times ago, violence against women has It has been an issue that has accentuated considerably over the years, so that the work carried out is an orientation to the correct application of the legal norm in the face of violations that arise.

The issue raised is focused on the correct application of legal instruments in favor of the most vulnerable groups that suffer from violence, it has been feasible to emphasize our research to the feminine environment for those who have developed a legal framework for the protection of women, I have here the importance of correctly applying the technical and legal tools that the State has been developing for the benefit of Ecuadorian society.

The research work has been developed based on the provisions of the *Political Constitution of the Republic of Ecuador* and international treaties, main instruments in the protection of women's rights, developing as main axis the provisions of the *Law to Prevent and Eradicate violence against women* as well as in its regulations; in the sections of the present project, jurisprudence, contributions, characteristics, contents about the protection of rights in favor of women as well as the analysis of the law, its correct application and its consequences of violating it can be found.

The remarkable existence of violence against women comes from ancient times of humanity from the perspective of excessive use of force by men, from that point of view over the years

laws have been regulated that allow to eradicate violence and consent for women's groups to be inclusive, respected and valued in this society.

This research work is developed based on the premise of the origin and evolution of violence against women, emphasizing basic concepts that allow us to provide adequate arguments, and in this way to be able to develop a comprehensive work that is oriented to the correct application of the instrument legal that is owned. The key points on the amparo measures are fully identified, within which the Ecuadorian State must pay attention, with the purpose of the correct application of the law and the relevant instruments for the benefit of women.

Chapter I

Theoretical framework

1.1. Origin and Evolution of Violence against Women

Violence has been associated since ancient times with the idea of physical force. The Romans called *Vis*, *vires* to that force, to the vigor that allows that the will of one is imposed on one of the other. *Vis tempestas* are called in Latin the 'vigor of a tempest'. Justinian's Code speaks of a 'force majeure, which cannot be resisted' (*Vis magna cui resisti non potest*). *Vis* gave rise to the adjective *violentus*, which when applied to things can be translated as 'violent', 'impetuous', 'furious', 'uncontainable', and when referring to people, as 'strong', 'violent', 'irascible'. From *violentus* were derived *violare* -with the sense of 'attack with violence', 'mistreat', 'to ruin', 'to damage'- and *violentia*, which meant 'impetuosity', 'ardor' (of the sun), 'rigor' (of the winter), as well as 'ferocity' and 'rudeness'.

It is necessary to mention the damage in the form of deception or fear on which interpersonal relationships are built, since this is one of the main origins of violence, which, in turn, is reflected in social networks and community interaction.

1.2. Violence

1.2.1. Definition

Violence is the type of interrelationship between human beings that is externalized with those behaviors or circumstances that, considered or imitated, threatens to cause serious harm, whether physical, sexual or psychological, to an individual who is part of society; or affect them in such a way as to limit their present or future potentialities. Galtung (1998) states: "It is a deliberate behavior that causes, or can cause, physical or psychological harm to other beings, and is

associated, although not necessarily, with physical aggression, since it can also be psychological, emotional or political, through threats, offenses or actions” (p.15).

1.2.2. Means

“There are several types of violence, including physical abuse, psychic abuse and sexual abuse. Their causes any vary, depending on different conditions” (Golding. 1954, s.p).

- a) Physical violence:** This is done through acts that directly affect the body and the health of the family members who suffer them. They produce disease, pain, injury, mutilation, or death. Any act of force that causes physical harm to the assaulted, whatever the means used, and its consequences, without considering the time required for recovery can be typified, according to law, like physical violence. This can manifest in slaps, shoves, kicks, and even with the use of objects such as belts, cigarettes, knives, sticks to others.
- b) Psychological or psychic violence:** It is exercised through facts that affect mental health and emotional stability, which is what, is commonly called moral or spiritual harm. It manifests itself in dirty words, threats, and phrases aimed at ignoring the value and contribution of others; in ridicule as a habitual form of expression; in the confinement to which family members are subjected, distancing them from the family circle or friends or, why not, preventing them from having access to study, work or recreation.
- c) Sexual violence:** Exercised through behaviors and attitudes that attack dignity and sexual freedom. It consists of forcing one of the members of the family (spouses, partners and/or children, among others) to have sexual relations using force, blackmail or economic contribution; using phrases aimed at belittling their sexual honour and dignity; forcing them to engage in sexual practices with which they disagree; imposing certain sexual behaviors and at the same time ignoring their sexual needs and proposals.

One of the forms of violence against women is that which takes place in their closest environment, particularly that which is perpetrated against them by their conjugal or marital partners, ranging from ill-treatment to death and homicide.

In 1995, the General Assembly urged States parties to strengthen national criminal, civil, labor and administrative sanctions to punish violence against women in both the private and public spheres.

It also established that all forms of sexual violence and trafficking in women are a violation of the human rights of women and girls.

This means that the Member States must prosecute all expressions of violence civilly; in the same, way as any other crime is prosecuted.

1.2.3. Violence against women

The General Assembly (1993) defines violence against women: “Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts or arbitrary deprivation of liberty, whether occurring in public or private life” (s.p).

Violence against women can be studied from various approaches:

- a) **Biological perspective:** Some cases of lesions in the limbic system, frontal lobes and temporal or abnormalities in the metabolism of serotonin can predispose to aggression.
- b) **Psychological perspective:** The most abusive parents are those with low self-esteem, a history of abuse, frustration, low tolerance, or alcohol dependence...
- c) **Psychiatric Perspective:** Witnesses and victims of violence have high rates of depression and post-traumatic stress. Substance and alcohol abuse or borderline or antisocial personality disorders greatly increase the risk of violence.

- d) **Context-specific perspective:** There are differences in the expression of violence in rural and urban settings because the stressors in those settings are different.
- e) **Social perspective:** There is evidence that social aspects play important roles in the expression of violent behaviors, one of which is the intergenerational transmission of violence.

“As a general rule, the unreasonable person is considered violent, who refuses to dialogue and obstinate in acting regardless of who weighs, and falls who falls. It is usually of a dominant selfish character, without any exercise of empathy” (Montagu, 1976, s.p).

1.3 Amparo measures

1.3.1 Definition

Amparo measures or calls also protection measures are those determinations that are taken by the State through its various public institutions, in order to make effective the care and protection of the victims of aggression; we can say that they are mechanisms that seek to provide support and protection to the victims of the aggressions and prevent their continuation. Also, these protective measures go further, in that they seek to make the victim feel calm and that he can gradually return to his normal life, rehabilitating him from his traumas. These protective measures are stipulated in our legislation.

Protection as part of the Comprehensive National System for the Prevention and Eradication of Violence against Women, Girls, Adolescents, Young People, Adults and Older Adults, will seek to guarantee the integrity and safety of women victims of violence and indirect victims, as well as its dignity, autonomy, integrity and well-being. (Comprehensive Organic Law to Prevent and Eradicate Violence against Women, 2018, p.33)

1.3.2 Amparo measures against violence against women

As an action, the protection or Amparo measures consist in safeguarding the physical, psychological and emotional integrity of the woman, in an original way initiating the process, all the rights different to those that are regulated, especially by the same constitution or by an organic law applicable, such as the right to physical or ambulatory freedom. In Ecuador, the administrative measures of protection will be established immediately, when there is a violation of the integrity of the woman victim of violence. Said measures will be granted by the Political Lieutenants, at the parish level; and, at cantonal level, the Cantonal Boards of Protection of Rights.

1.3.2.1 Objectives

The protection measures will be of immediate and provisional nature; they will be aiming to prevent or stop the threat or violation of life and integrity, about acts of violence against women, girls, adolescents, young people, adults, and older adults, determined in this legal body.

The governing body of the System must arrange for all public and private sector entities to determine administrative or internal measures for prevention and protection in the event of any act of violence established in this Law.

The main objective is to establish measures to prevent violence against women by applying the Law against violence, through the use of techniques and methods that guide the study, such as:

- Analyze the causes that cause interfamily violence.
- Define measures to prevent violence against Women.

- Determine the application of procedural principles in cases registered in the judicial units of violence.

- Analyze the number of complaints received in the units of violence.

- Examine the profile of the aggressor and the victim, to determine the indicators that affect violence against Women.

1.3.3 Legal Nature

In the XXI century no legislation would dare to regulate violence against women as legitimate, and even more so when it is conceived by International Law as a violation of human rights, inalienable and inherent to the personality. But the application of the Law may be very distant from the content of the norm, and the ignorance of legal protection may be blinded by the history and millenarian cultures that still accompany contemporary society.

According to the Dictionary of the Spanish Language of the Royal Spanish Academy (1780) the "principle of law" is the "non-legal norm that is supplementary to it and constituted by doctrine or aphorisms that enjoy the general and constant acceptance of jurists and courts.

Women: girls, adolescents, young people, adults and older adults, in all their diversity, have the right to recognition, enjoyment, exercise and protection of all human rights and freedoms contemplated in the Constitution of the Republic, international instruments ratified by the State and in the current regulations, which include, among others, the following:

1. To a life free of violence in the public and private spheres, which favors their development and well-being.
2. Respect for their dignity, integrity, privacy, autonomy and not to be subjected to any form of discrimination or torture.
3. To receive clear, accessible, complete, truthful, timely information, in Spanish or in their own language, appropriate to their age and socio-cultural context, in relation to their rights, including their sexual and reproductive health; to know the protection mechanisms; the place of provision of care, emergency, support and comprehensive

recovery services; and other procedures contemplated in this Law and other concordant regulations.

4. To be guaranteed the confidentiality and privacy of your data, those of your descendants or any other person under your possession or care.
5. To receive protection and integral attention through adequate and effective services, immediately and free of charge for the victim and his dependents with sufficient, accessible and quality coverage.
6. To receive a sensitized treatment, avoiding revictimization, taking into account their age, their situation of disability or other conditions or circumstances that require special attention.
7. To the immediate assistance of the public force at the moment that the victims request it.
8. To respect their permanence or general conditions of work, as well as their specific labor rights, such as those related to maternity and breastfeeding;
9. To receive protection from situations of threat, intimidation or humiliation.
10. The others established in the current legal system.

Chapter II

Applicability of the law

2.1 Characterization of the research site

The investigation for this work was carried out in the “Complejo Judicial Florida Norte de la Ciudad de Guayaquil”, located in the city of the province of Guayas with the Judges and lawyers in the free professional practice.

Each respondent was asked questions that are focused on determining whether if there is the correct application of the Comprehensive Organic Law to Prevent and Eradicate Violence against

Women, various have been the answers since obviously this is a Law that from the context is inapplicable.

We start from the premise that, at the level of the Ecuadorian state, a large material and human contingent has been put in motion to implement the correct application of the newly adopted Law. But in the words of the respondents, there is still a long way to go. We have a long way to go since it is not only enough for the judicial function body to have what is necessary to provide an efficient and effective service to the community, some bodies correspond to the state system that has to work based on training, adopting a level that allows victims of violence to be addressed as a priority.

The main characteristics that a family suffering from violence can present are:

Generally in families where family violence appears; They have a fixed or immovable hierarchical the organization, also, their members interact rigidly, cannot contribute their own identity, must act and be as the family system imposes them. People subjected to critical

situations of family violence have a weakening of their physical and psychological defenses, which would lead to an increase in health problems. Many suffer from depression and psychosomatic diseases.

Ecuador's social environment is not far from Latin American and underdeveloped environments; the lack of proper sex education in educational institutions is the main shortcoming that Ecuadorian society has. The family nucleus is threatened by the interference of social networks that often orient violence; television programs in which scenes of extreme violence are developed are undoubtedly benchmarks for Ecuadorian men to exercise that repressed machismo that for years has afflicted us.

Our Constitution (2008), in Its Article 67, states that:

The family is recognized in its various types and the State will protect it as the fundamental nucleus of society and guarantee conditions that fully favor the attainment of its ends. These shall be constituted by a legal link or in fact links it shall be based on the equal rights and opportunities of its members. (p.45)

The purpose of this research work is aimed at benefiting the family as the core of society, which is covered by the Constitution of the Republic of Ecuador, it is important to mention that the family must remain united, through bonds of love, respect, daily sharing, permanent, that allows the family to live in unity and without violence.

2.2. Description of the procedure that is carried out inapplicability of the Law

The Ecuadorian state without limiting resources has implemented the Integral National System to Prevent and Eradicate Violence against Women which is a set of institutions, standards, policies, plans, programs, mechanisms and activities that have the organization, that, has the sole purpose of preventing and eradicating violence against women, through the prevention, care, protection and comprehensive reparation of the rights of victims.

Every event and the process that is carried out by the Ecuadorian state on behalf of victims of violence is gratuitous. Those who suffer from violence should go to the relevant entities to ensure a decent life without any intimidation; this is how we know that the people affected feel fully entitled to report any kind of action for those who feel affected.

Those who have been victims of violence have entities such as the Public Prosecutor's Office and the Judicial Units to appear and file the respective complaints; from that time as established in the Violence Act, the necessary contingent is mobilized, from which a medical and psychological assessment is departed to the victim, in the case of a flagrant crime the respective hearing will be held in the sanctions or its effect shall extend the relevant protective measures; all this is done based on the provisions of the law, taking into account the axes of prevention, care, and repair.

2.3. Procedure and granting of immediate protection measures

The Constitution of the Republic in its first article clearly states that Ecuador is a constitutional state of rights and justice, a definition on which a set of principles such as legal certainty that is fundamental to the rule of law is built, which translates into the endorsement that he offers to every person, that his rights enshrined in the Constitution and the laws will be respected.

People are recognized and guaranteed: To enjoy an existence free of any kind of violence both internally and externally. The state control must be protected by measures necessary to warn, remote and punish all forms of violence, especially all forms against women as well as all those who are part of the priority groups Ecuador. Equal measures must be taken against slavery and sexual exploitation. (Ecuadorian Constitution, 1980).

Any person who is aware of the committing of acts or acts of violence may request the granting of urgent actions and administrative measures of immediate protection, in favor of the victim, verbally or in writing, with the Police Urgent ones; and the Cantonal Boards for the Protection of the Rights and Political Tenures, administrative ones.

The Violence Act (2008) in Art. 53 states that: "The procedure for ordering administrative measures of immediate protection shall be established in the regulations issued for this purpose by the Governing Body of the Comprehensive National System for the Prevention and Eradication of Violence against Women" (p.26).

Immediate administrative protection measures shall be granted by the Cantonal Rights and Political Tenures When the right to personal integrity and women's worth living has been violated or violated, at a time twenty-four hours, the body granting the immediate administrative measure of protection shall inform the judicial bodies of the fact and measure granted for ratification, modification or revoking.

Chapter III

Results of the investigation

3.1. Interpretation of Research Results

Surveys conducted in the “Complejo Judicial Florida Norte de la Ciudad de Guayaquil”, Guayas province with the judges and lawyers in the free professional practice.

3.1.1 Types of research

The typology of this research is subdivided into the following classification:

- **Bibliographic and documentary.-** Due to the need for a permanent consultation in the different laws and their normative content that governs in Ecuador for this type of case, it is necessary to indicate precisely what is stated in the Comprehensive Organic Law to Prevent and Eradicate Violence against Women.

This law aims to prevent and eradicate violence against women, through the transformation of socio-cultural patterns and stereotypes that naturalize, reproduce, perpetuate and sustain inequality between men and women, as well as attend, protect and repair victims of violence. (Comprehensive Organic Law to Prevent and Eradicate Violence against Women, 2018, p.1)

- **Field.** - This investigation by its characteristics addressed an eminently social problem, which required a consultation work in an environment where the facts were identified to feel closely the reality we face daily.
- **Descriptive.**- Due to its detailed explanation of the facts both in the identification and contextualization of the investigation, it has been carried out based on a description of laws and regulations as well as the analysis carried out in the field.

3.1.2 Population and sample

The universal population and shows that it has been applied in the survey is carried out to obtain the desired results and is determined based on the parameters detailed below:

- Law professionals in free exercise registered in any collegiate body of Ecuador.
- Violence judges legally possessed in the Northern Judicial Complex of the city of Guayaquil.

3.2. Methods, techniques, and instruments

3.2.1 Methods

The research carried out was based on methods and techniques provided by scientific research.

“Techniques are the procedures and instruments we use to access knowledge. Surveys, interviews, observations and everything that derives from them” (Morone, 2010, p.2)

3.2.1.1 Inductive Method

Specifically, it is a procedure that goes from the individual to the general, in addition to being a systematization procedure that, based on particular results, attempts to find possible general relationships that support it (Gómez, 2012).

That allowed us to focus our direct and indirect observation on the problem of study, emphasizing every detail to go from the particular to the general in the conception of the solution in favor of the correct application of the Law in what more pertinent to protect society.

This method allowed us and required the application of a questionnaire corresponding to the survey technique.

Then we have been able to abstract theoretical principles, conceptual contents, visions of the norms of law in their conception of application, detect development gaps and substantiate the characteristics of the problem to corroborate the correct solution that implied the obligation to generalize by the successes achieved.

3.2.1.2 Deductive Method

That required deepening the study and obtaining information from the general knowledge in its scientific space of Law to the particular problem, which involved the effects in the social environment with the characteristics of the application and results obtained.

3.2.2 Synthetic Analytical

With the careful study of science in the full extent of the theory of law in relation to the proposed issue and problem that was attempted to solve, to give way to the specificity of the problem - general objective - idea to defend, without bulky theoretical statements that although valuable they had no reason to extend the research work.

3.2.3 Techniques

The following scientific research techniques were selected that allowed us to obtain the desired results with the most accurate information possible:

3.2.3.1 Direct Observation

That in this case it was done through adequate planning to obtain in detail and systematically all the particularities of the studied phenomenon, guaranteeing the objectivity of the information.

In the study of this phenomenon, as a legal professional, I have made a thorough and meticulous observation participating dynamically and actively in obtaining the information, trying to see as much as possible.

Field observation has been made by going personally to the places of the events, recording all the information most possibly.

3.2.3.2 The Survey

It is one of the most used field research techniques in the social concert, which allowed us to gather information about the phenomenon to be observed or the problem to be solved.

The questions that were asked were strictly adjusted to the details of the problem investigated, easily understood and interpreted, without any intentionality or double sense of orientation to your answer.

The respondents were prepared in advance with a thorough explanation of what is involved, with a formal, discreet cordial dialogue, not forced in any way to respond when they said so.

Conclusions

- The aggression includes behaviors whose purpose is to cause physical or psychological harm to others, the intention is a key element in the aggression, that is, feeling like harming or harming a certain subject is the essential essence to recognize an aggressive behavior.
- There are innumerable forms of family violence. Violence towards the elderly, between spouses, towards children, women, men, the disabled, etc. can be considered. It is always difficult to think of a typical family scheme, because violence can be psychic or physical, and it occurs in all social classes, cultures and ages. Most of the time they are adults to one to several individuals.
- Domestic violence "is any action or omission committed within the family by one of its members, which undermines the life or physical or psychological integrity, or even the freedom of another member of the same family, which causes a serious damage to the development of his personality."
- Comprehensive Organic Law to Prevent and Eradicate Violence Against Women as stipulated in the Comprehensive Criminal Code protects the most vulnerable within a family, this law has as its primary purpose the protection of victims of family and social

violence, in practice it has been transformed into an instrument in which the essential procedural principles are detrimentally violated to the detriment of the accused.

- Family violence is characterized in that someone with more power abuses others with less power. The term family violence refers to all forms of abuse that have 78 places in relationships between family members. The abuse relationship is one in which one of the parties' causes' physical and / or psychological harm to another member. This damage can be given either by action or by omission, and occurs in a context of power imbalance.
- To establish that a family situation is a case of family violence, the abuse relationship must be chronic, permanent and periodic, thus referring to the different forms of abusive relationship that characterize a family bond.
- The purpose of this research work is aimed at benefiting the family as the nucleus of society, which is protected by the Constitution of the Republic of Ecuador, it is important to mention that the family must remain united, through love ties, respect, the daily, permanent sharing that allows the family to live in unity and without violence.

Recommendations

- It is recommended to the Administration of justice, to apply in a practical way the legal instruments in order to carry out due process and in this way comply with an effective judicial protection, exercising each of the stipulations of the rules that for this purpose you have been created.
- Legislators are recommended to review each of the recitals, titles and chapters of the provisions of the Comprehensive Organic Law to Prevent and Eradicate Violence Against Women, so that at the time of creating new laws effective use is guaranteed of constitutional rights in favor of women and members of the family nucleus.
- That the Judiciary Council, from their jurisprudence powers, enable the rights and guarantees for all citizens and that due process must be adhered to without violating the rights of both the actor and the respondent.
- Conduct information campaigns in sectors where there are social environments identified as vulnerable in order to raise awareness of the provisions of the Comprehensive Organic Law to Prevent and Eradicate Violence Against Women, as well as its development and applicability in case of violence against women or any other member of the family nucleus.

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