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Gender and the Law: Mexican Legislation on Domestic Violence

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GENDER AND LAW: MEXICAN LEGISLATION ON DOMESTIC VIOLENCE

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I. INTRODUCTION

The law is an instrument of the State used to organize and regulate the functioning of society. As societies become more complex, the law tends to follow a parallel course, usually at a reduced, and sometimes conspicuously slow pace relative to social events. The law's failure to keep pace with events has been frequently criticized and has been characterized as an obstacle to social change.²

In effect, the regulation of social relationships often carries with it the validation or legitimization of classist, racist, or patriarchal structures. It likewise signifies an acknowledgment of the public domain as a superior construct, one that is in fact, superimposed over the private domain. The latter point is particularly significant to an analysis of women's status, not only from the strictly legal standpoint, but also in broader social terms. The public-private dichotomy is one of feminism's longstanding concerns, precisely because beyond merely categorizing spheres of movement and activities, it assigns hierarchies of functions and tasks, and relegates women to the private

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2. EDUARDO NOVOA, *EL DERECHO COMO OBSTÁCULO AL CAMBIO SOCIAL* (1983).

domain.

The law has been used to perpetuate the subordination of women or to impose on them important identifying characteristics. Examples abound of laws that penalize female adultery more severely and that restrict women's access to the workplace, to productive resources, and to the justice system itself, not to mention laws restricting access to procedures for reporting rape and sexual abuse. We have recently observed the other side of the coin in the enactment of legislation that condemns this structure of discrimination and establishes guidelines for arriving at appropriate solutions. The presence of feminism has been central to this process. Working from a variety of perspectives, militancy, academia, and the media, feminism has consolidated itself to a degree that has enabled it to petition the State with concrete demands and to design international strategies that have begun to bear important fruit in Latin America.

This article analyzes the regulation of domestic violence in the Mexican legal system beginning with recent legislative reforms. The first section offers a general overview of the legal system and the diverse array of existing norms and principles. A second section addresses the Law for the Assistance and Prevention of Intra-family Violence for Mexico City [*Ley de Asistencia y Prevención de la Violencia Intrafamiliar para el D.F.*]. This law was the first on the subject to be enacted in Mexico. The law is administrative in nature and has certain limitations, particularly in relation to the procedures it sets forth. The third section discusses reforms to the criminal code and criminal procedures that were recently approved by the House of Representatives. Finally, some conclusions are presented.

II. THE MEXICAN LEGAL SYSTEM

The structure and substance of any legal system is inherently complex and difficult to understand. Margaret Schuller³ proposes a model that facilitates understanding of the complexity of legal relationships based on the integration of three closely related components.

The first of these is the legislative component, which includes all law, that is the totality of norms (political constitution, federal laws, local laws, codes, regulations, decrees, agreements, etc.) that sanction conduct, including both substantive and procedural areas. This

3. MARGARET SCHULLER, *PODER Y DERECHO. ESTRATEGIAS DE LAS MUJERES DEL TERCER MUNDO* (1987).