



Organizational moral harassment: A revision of normative matrix (Inter) national

Acoso moral in las organizaciones: Una revisión de la matriz normativa (Inter) nacional

Anderson Henrique Vieira¹, Livia Oliveira Almeida² & Pedro Lucas Formiga de Almeida³

Abstract: Moral harassment is the term used to refer to conduct whose purpose is to damage the subjective elements of the individual, such as honor and dignity. As a result of this configuration, it is all too present in labor relations due to the control instruments put in place to guarantee productivity, outlining what is identified as organizational Moral harassment. Thus, since it is an abusive practice that affects constitutionally protected legal assets, it is urgent to propose reflections that have this issue as their centrality, and it is worth asking: is there adequate legislative protection given by the Brazilian legal system to cases of organizational Moral harassment in the workplace? The general aim of this article is to analyze the legislative protection provided by the Brazilian legal system for cases of workplace Moral harassment. To obtain possible answers, bibliographical and documentary techniques were used. The research is also empirical, with a qualitative-quantitative approach. It was concluded that the lack of regulations at federal level makes it difficult to identify the elements that configure organizational Moral harassment, as well as impacting on the effective protection of labour rights.

Keywords: *Moral harassment; Organizational; Normative act; Legal protection; Rights.*

Resumen: Se denomina acoso moral a la conducta que tiene por objeto lesionar elementos subjetivos del individuo, como el honor y la dignidad. Como consecuencia de esta configuración, está demasiado presente en las relaciones laborales debido a los instrumentos de control puestos en marcha para garantizar la productividad, perfilándose lo que se identifica como acoso moral organizacional. Así, por tratarse de una práctica abusiva que afecta bienes jurídicos constitucionalmente protegidos, es urgente proponer reflexiones que tengan este tema como centralidad y cabe preguntarse: ¿existe una adecuada protección legislativa dada por el ordenamiento jurídico brasileño a los casos de Moral harassment organizacional en el ambiente de trabajo? El objetivo general de este artículo es analizar la protección legislativa dada por el ordenamiento jurídico brasileño a los casos de Moral harassment laboral. Para obtener posibles respuestas, se utilizaron técnicas bibliográficas y documentales. La investigación también es empírica, con un enfoque cualitativo-cuantitativo. Se concluyó que la falta de reglamentación a nivel federal dificulta la identificación de los elementos que configuran el Moral harassment organizacional, además de impactar en la efectiva protección de los derechos laborales.

Palabras clave: *Intimidación; Organizacional; Acto normativo; Protección jurídica; Derechos.*

*Author for correspondence

Received for publication on 2024/04/04; approved on 2023/10/25

¹ PHD Student in Law from UFPB, with co-guardianship period in National University of Colombia, Master in Planning and Territorial Dynamics in the Semi-arid from UERN, Graduated in Law from UFCG, e-mail: andersonhvieira@gmail.com, ORCID: <https://orcid.org/0000-0001-8999-0044>*

² Student, Law, UFCG, e-mail: liviaolivs12@gmail.com, ORCID: <https://orcid.org/0000-0002-3140-3844>.

³ Student, Law, UFCG, e-mail: pedro.formiga@estudante.ufcg.edu.br, ORCID: <https://orcid.org/0000-0002-2015-7676>.

INTRODUCTION

Moral harassment is a set of damaging behaviors (humiliation, threats, debauchery), of a physical or psychological nature, which aim to hurt the victim's dignity and honor with a given frequency and continuity. Moral harassment committed within corporations and work institutions is known as organizational Moral harassment.

Cases of Moral harassment are linked to the economic and historical context of the industrial revolution, a period in which there was a need to rationalize forms of production. Faced with this need, methods of controlling work activities became commonplace, such as the scenes in Chaplin's film *Modern Times* (1936), in which feeding machines and production conveyors are used to save time, despite causing pressure on workers and psychological problems due to repetitive processes. This situation can be evaluated today, based on new technological and productive dictates (inclusion of software and applications), leading to organizational Moral harassment.

In this context, there is an urgent need to develop research and reflections that address the debate on organizational Moral harassment from the perspective of legal protection in the Brazilian legal system, considering the absence of specific legislation at the federal level and the emergence of new methods of work relations derived from technological rationalization and its consequent increase in new actions that correspond to Moral harassment, even though they are not properly protected. This raises the question: is there adequate legislative protection given by the Brazilian legal system to cases of Moral harassment in the workplace?

With this in mind, the general aim of this article is to analyze the legislative protection given by the Brazilian legal system to cases of moral harassment in the workplace. To this end, the philosophical theories that address factors of control and power in the employment environment were used as a basis, as well as analysis of normative acts in domestic law and international experience. In this way, the research was carried out empirically using the data mining technique in relation to the content and form of occurrence of the term "moral harassment" in the collection of national and international legislation. At the national level, the 26 states and the Federal District were checked, while at the international level a total of nine countries were checked. About international treaties, five of the most relevant were listed, three of which have been accepted by the Brazilian legal system: the Pact of San José da Costa Rica, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

In addition to this introduction, the article is structured in the following order: topic 2, which will deal, in a conceptual and historical way, with moral harassment and, in particular, organizational moral harassment, with its elements and consequences in work relations; topic 3, in which it addresses from a

philosophical reading the historically known forms of control, correlated to moral harassment in the work environment; topic 4 analyzes moral harassment from a legal perspective, compiling legislation from Brazilian states, foreign legislation and international pacts or conventions that address or reflect the issue of moral harassment; finally, topic 5 brings the final considerations on the subject of the article.

THEORETICAL FOUNDATION

Moral harassment and its defining elements

Macrosocial changes due to globalization and neoliberal economies offer the idea of the multifunctional productive individual, where goals are the dictates of the new world of work. Also in this context, there has been a diversification of work methods and hiring formats. These scenarios lead to greater competition, insecurity, and anxiety among workers, which influences violent attitudes in the workplace, one of which is Moral harassment. This harmful conduct goes beyond the existence of poor working conditions, also considering conflictive and damaging relationships between individuals. Although it is defined from the point of view of causing humiliating occasions and embarrassment for workers, Moral harassment, according to Heloani (2004), is characterized by systematic repetition, intentionality, specificity, duration, and frequency. These are behaviors that harm the dignity of the human person, the right to honor and health.

Despite the possibility of listing such definitions, the concept of Moral harassment can take on many forms, given the diversity that exists in labor relations. The concepts are also diverse in terms of the scope in which they seek to list aspects that become more relevant and defining in a given context. Thus, Moral harassment is seen as a universal episode that is present in society in such a way as to accompany its variations in value. This aspect is supported by Hirigoyen (2008, p. 68), who defines Moral harassment in different formats, in accordance with the cultural aspects of a given area. This heterogeneous aspect, although it attributes the diversity of possibilities in which this type of conduct can be configured, is also a problematic point, since certain attitudes are normalized given the cultural aspect analyzed.

According to Heloani (2004, p. 127), Moral harassment is "(...) the result of deteriorated inter-individual relations as a result of perverse forms of work organization". The author therefore defines moral harassment as being closely related to the new ways of managing, strategizing and organizing work. In the same vein, the Booklet on Preventing Moral Harassment defines the practice as "the exposure of people to humiliating and embarrassing situations in the workplace, in a repetitive and prolonged manner, in the exercise of their activities" (Secretaria de Comunicação do TST, 2020, p. 6). In this way, we can see the emphasis on the aspect of the practice affecting the dignity of the person at work, continuously impacting the subjective morale of the victim. However, this concept, as well as the others,

leaves a vague duration for moral harassment to be configured, not least because the configuration depends on the intensity of the harmful acts and the consequences generated in the day-to-day - and not only in the exercise of labor activities - of the worker, being "any conduct that causes psychological or physical embarrassment to the person" (Cassar, 2012, p. 912). Thus, the most important factor is to identify the elements that effectively characterize Moral harassment at work, and the impacts that reverberate in the victim's social life are relevant.

Furthermore, about the conduct of those who practice Moral harassment at work, Stadler (2008) points out some of the harasser's behaviors, such as isolating victims from other co-workers, making explicit criticisms intending to humiliate, "jokes" or sarcasm, also hurting the victim's dignity. If done by a hierarchical superior, for example, the practice becomes more evident when the harasser, in addition to the actions mentioned above, forces the victim to meet impossible targets or orders them to carry out tasks that are outside their professional scope.

Along the same lines as the conceptual breadth of the subject, there are the types or modalities of Moral harassment, vertical (ascending and descending) and horizontal. The ascending vertical typology occurs when someone at a lower hierarchical level carries out the acts that characterize Moral harassment directed at their superior, regardless of the aim of the actions. Moral harassment is vertical descending when the superior carries out the moral harassment towards their inferior or subordinate members, given their position of command within the labor environment, which, if it goes to the extreme and results in aggression towards others, can constitute vertical descending moral harassment. As for horizontal Moral harassment, according to Alckmin (2005): it occurs between people of the same hierarchical level at work, either due to more intense competition in a professional sense or even individual aspects that are not directly linked to the work itself, but rather to social interaction.

In view of these main types of Moral harassment, despite the structural differences between them, there is a convergence in the characteristics linked to the abuse committed by the perpetrators of Moral harassment, which hurts the dignity, honor, image, and integrity (physical and/or psychological) of the victim, regardless of who commits the Moral harassment.

Organizational Moral harassment arises from abusive practices on the part of company management, between subordinates and between workers. Therefore, the injury is not restricted to a specific worker, but also to group actions. Certain acts offer concreteness to this definition, such as the stipulation of targets, demands, as well as constant surveillance in the workplace arising from some method of control as set out in the previous topic, establishing a kind of authoritarian corporate management (Muçouçah, 2011).

The current forms of work organization corroborate scenarios of symbolic violence (Bourdieu, 1998), in the social view, because abuses in the organizational sphere are subtle acts that are justified by the institutions' operating policies, adopting the aspect that certain behaviours are fundamental to guaranteeing the maintenance of the company's values and consequently make it possible to effectively achieve its objectives. The result of this is what Arendt (1999) defined as the banality of evil, in which she verified the fact that individuals act in everyday activities without realizing that they may be corroborating the institutional mechanisms of violence, trivializing it. As explained by Soboll (2008, p. 21), it takes the form of:

A process in which violence is embedded in organizational or managerial apparatuses, structures and policies that are abusive and inadequate. The purpose is to exercise work and group management with a view to productivity and organizational control.

This scenario becomes feasible based on the initial idea that this form of production engages workers in the production process, while at the same time breaking the bonds of solidarity within the organizations themselves, generating competitiveness. Both factors would then lead to increased productivity.

However, what has been observed over the last few years is that the context of neoliberal ideology, by encouraging strong performance for greater profitability, generates strong pressure and an environment favorable to the development of harassment. From this perspective, in addition to the possible increase in accidents at work, it corroborates the emergence of psychological ailments such as depression, anxiety and *burnout*¹. In view of this, the practice of Moral harassment "aims - as a rule - to eliminate the worker from the business organization, forcing a situation in which the employee resigns and/or leaves the workplace" (Carvalho, 2009, p. 65). What has not been considered is that as a result of such problems for workers, the institution's performance will also suffer. With this in mind, the next topic will discuss the philosophical theories that conceptualize control/power factors in the employment environment.

The disciplinary society and labor relations

The debate on Moral harassment in the context of labor relations involves understanding that there are still remnants of the disciplinary society (Foucault, 2014) influencing current relations, despite the

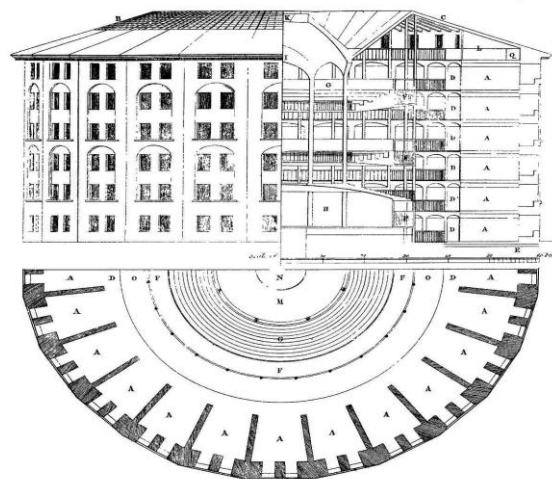
¹ It is characterized by an emotional disorder caused by exhaustion, stress and wear and tear related to overwork (BRASIL, Ministry of Health).

processes of improvement. From Bentham (2008) to Han (2017), it can be seen that the form of control in the labor environment has only changed in terms of the instruments implemented. It is therefore important to discuss the aspect of control from the perspective of institutions and individuals themselves. This is what is intended in the following lines.

Bentham's panopticon and the Foucauldian disciplinary society

The Panopticon was created in the 18th century by Jeremy Bentham and was linked to an attempt to contain insubordinate movements among workers, based on the configuration of the Paris Military School, where isolation and constant surveillance were the basic elements of the system. The spatial characterization was based on a circular building full of cells with windows for total visibility, and a central tower that provided observation of the entire space.

FIGURE 01: Panopticon scheme.



SOURCE: Foucault (2014).

This surveillance model was used to identify individuals who didn't work and, consequently, force them into some activity, and was later adapted to factory production models. The panopticon model reinvents the scenario of forms of control, to the extent that coercion does not resort to physical force as in the medieval age, but is sculpted using rational and subtle instruments, which represents similar aspects to the problem of the study in question in today's labor relations.

Foucault from his contact with the panopticon model presents the concept of disciplinary societies (2014), in which he defines it as a way of exercising power in the period of the industrial revolution,

concluding that it served as a contribution to business management models. Power was thus an element of social order and the panopticon had worked towards this.

Foucault (2014) analyzes the power relations in disciplinary institutions, including factories. The aim of this disciplinarity was to monitor the bodies of individuals, in order to establish not only control, but also repression of certain behaviors. The power mentioned by Foucault (2019) is not concrete, it is part of the relationship, which is why it is important to think about the existence of power linked not only to the state, but also to institutions. It is in this sense that behaviors, discourses and actions are produced that "[...] target the human body, not to supplicate it, to mutilate it, but to improve it, to train it" (Machado, 2019, p. 20). These aspects have led to the docilization of the individual, making them more adapted to the molds of production. Disciplinary power, according to Danner (2011, p. 37), is shaped by "[...] a complex material network of coercions, whose effects and efficiency are increasingly controlled, so as to obtain a maximum economic and political return at the cost of minimum expenditure". It is in this scenario that industries begin the process of rationalizing time and their activities, allowing the economy to be represented for the sake of power, in which the increase in the power of the dominator and the increase in the dominated share become the basic elements of this system.

Deleuze's society of control to Han's society of weariness

With the development of technologies and communications, the instruments of control have been remodeled and, according to Deleuze (2013), the old spaces of control are in decline. This is because the disciplinary society will be transformed into the society of control, which works "[...] no longer by confinement, but by continuous control and instant communication" (ibid., p. 220).

In relation to information technologies, Bauman (1999) constructs the new gear of power, the Synoptic. In this case, the form of control would take place globally and at a distance, as it would be related to access to data from computers, cameras, data in company software and forms of management.

Thus, the impact in the labor sphere is evident, because according to Zarifian (2002, p. 24), there are permanent transformations in the content of work, with targets and demands regarding the intellectual novelties that the individual must possess around the handling of new instruments, which generates the possibility of contexts favorable to harmful actions. In the society of control (Deleuze, 2013), figures dictate access and organize information. This means that population diversity is synthesized into data, which will be used to survey behavioral patterns, which will serve to maintain control.

The overvaluation of the control society (ibid.) poses risks, as Han (2018) presents in the concept of the performance society. In this scenario, the pan-optic gains ground and establishes mutual surveillance in which "The extremely precise computer systems of today's organizations allow meticulous

monitoring of events and performance in the workplace" (Lyon, 1995, p. 103). In work organizations, surveillance takes place without employees being identified, because software that monitors workers' activities is already a reality. The Kickidler program² makes it possible to "[...] monitor remotely in real time and see what your employees are doing at the moment, what websites they are opening, what programs they are using".

This type of power is no longer restricted to bodies; psychopolitics (Han, 2018) offers a reality camouflaged as freedom, as individuals are independent to choose, but those who refuse to do so will not be able to access many workplaces. Thus, the search for maximum performance becomes a necessary reality in the job market, despite the fact that it generates a lot of wear and tear. Physical and mental exhaustion are a reality, because competition with oneself generates highly destructive self-exploitation, in which "[...] the subject of performance directs it against itself" (Han, 2017, p.101). This situation of unbridled pursuit of maximum performance fosters adverse relationships, elements of violence and, consequently, corroborates cases of organizational Moral harassment.

Thus, the methods of control that emerged after the panopticon abandoned the use of physical spaces and these instruments of power were improved, whether from the institutions, as Foucault explains, or due to new technologies, as Deleuze points out, or from the self-charging of individuals towards themselves, in Han's idea. Regardless of the format it has acquired, control still remains a basic element of society, strongly present in the labor sphere, to the point of having an impact on the worker, the social body and the productive environment itself. Against this backdrop, it is necessary to look at how organizational Moral harassment is dealt with in national and international legislation, in order to reveal its possibilities for identification at both national and international level, as well as assessing its effective protection of workers' dignity. This is the aim of the following topic.

RESULTS AND DISCUSSIONS

Moral harassment and its (inter)national normative matrix: between the guarantee of rights and legal insecurity

The law is one of the main instruments used to prevent cases of Moral harassment. For this reason, the absence of specific legislation when it comes to Moral harassment hinders the identification and punishment of these cases. The Brazilian legal system uses some constitutional instruments to try to

² Available at: <https://www.kickidler.com/br/>

protect workers, such as the foundations³ of the Federative Republic of Brazil, the dignity of the human person and the social values of work.

Brazilian legislation prohibits coercion, abuse or illicit advantage due to constitutional instruments, such as the principle of human dignity and the right to honor, both of which have normative force (Hesse, 1991); in the Consolidation of Labor Laws (CLT), which provides for labor rights such as weekly rest on Sundays; in the Civil Code with civil liability (Brasil, 2002)⁴ ; and in the current Penal Code with, for example, the crime of frustrating work guaranteed by labor law (Brasil, 1940)⁵ . In addition, trade unions also have the prerogative to intervene in cases of abuse. However, the discredit attributed to cases of Moral harassment by the Brazilian legal system is evident and is intrinsically linked to elements of control, especially those associated with technological instruments, as set out by Han (2018) with the concept of the ban-optic system. Its delineation based on mercantile, exploitative factors and treatment by labor law becomes more concrete when analyzing the 2017 labor reform (Law 13,467), in which only cases of moral damages were addressed, within the scope of immaterial injuries. This change allows many cases of organizational Moral harassment to be treated by the courts as moral damage.

Despite the absence of an autonomous, specific and organized body of legislation that protects the issue of Moral harassment in Brazil, as we have seen, there are state laws that address the issue in line with international regulations. This is what will be discussed next.

Moral harassment in state legislation

Given the lack of specific legislation at federal level, we compiled a list of states that have legal protection on the subject. The aim was to cover all five Brazilian regions. From the outset, it should be pointed out that the cultural and population diversity between the regions is not an element capable of curbing the progress of harmful conduct, because, according to the methods of control used today, as Bauman (1999) indicates with the name synoptic, differences are synthesized into data with the aim of depersonalizing and consequently providing the formation of behavioral patterns accepted by the system, which will serve in favor of maintaining control. It is therefore worth making observations about relevant points derived from the survey of the data in question.

³ art. 1, items III and IV, CF/88.

⁴ Art. 186 of the Civil Code. "Whoever, through voluntary action or omission, negligence or recklessness, violates a right and causes damage to another, even if exclusively moral, commits an unlawful act." (Brasil, 2002).

⁵Art. 203 of the Penal Code - "To frustrate, through fraud or violence, a right guaranteed by labor legislation." (Brasil, 1940).

BOX 01 - Identification of state legislation by region on Moral harassment.

NORMATIVE ACT⁶	YEAR	REGION	BREAKDOWN OF THE TOTAL NUMBER OF ACTS BY REGION
<ol style="list-style-type: none"> 1. LAW No. 7.492 (AL) 2. LAW No. 13.314 (PE) 3. LAW No. 15.036 (EC) 4. COMPLEMENTARY LAW NO. 127 (PB) 5. LAW No. 14.343 (BA) 6. LAW No. 11.067 (MA) 7. TCE/PI RESOLUTION no. 22 (PI) 8. LAW no. 5.419 (SE) 9. LAW No. 10.691 (RN) 	<ol style="list-style-type: none"> 2013 2007 2011 2015 2021 2019 2021 2004 2020 	NORTHEAST	Laws: 8 Resolution: 1
<ol style="list-style-type: none"> 1. DECREE No. 15.633 (MS) 2. ORDINARY LAW No. 18.456 (GO) 3. LAW NO. 11.882 (MT) 4. DECREE NO. 41.536 (DF) 	<ol style="list-style-type: none"> 2021 2014 2022 2020 	WEST CENTRAL	Decree: 2 Law: 2
<ol style="list-style-type: none"> 1. COMPLEMENTARY LAW no. 116 (MG) 2. LAW No. 3921 (RJ) 3. REPEALED - LAW No. 13.036 (SP) 4. LAW NO. 10.117 (ES) 	<ol style="list-style-type: none"> 2011 2002 2008 2013 	SOUTHEAST	Law: 4
<ol style="list-style-type: none"> 1. DRAFT LAW No. 142 (RR) 2. LAW No. 5034 (RO) 3. LAW No. 3.810 (TO) 4. COMPLEMENTARY LAW no. 377 (AC) 5. LAW No. 3.791 (AM) 6. ORDINARY LAW 1.818 (AP) 	<ol style="list-style-type: none"> 2020 2021 2021 2021 2012 2014 	NORTH	Bill: 1 Law: 5
<ol style="list-style-type: none"> 1. COMPLEMENTARY LAW No. 12.561 (RS) 2. LAW no. 17.742 (SC) 3. CGE RESOLUTION 33 (PR) 	<ol style="list-style-type: none"> 2006 2019 2022 	SOUTH	Law: 2 Resolution: 1

SOURCE: Prepared by the authors (2022).

As shown in the table, 88% of all states in the five Brazilian regions had laws on moral harassment, with Pará, Roraima and São Paulo being the only states where no such laws could be found.

⁶ Although the bill is not a normative act, for the purposes of this research it is understood to be a relevant analysis marker and is therefore included in the group.

Specifically in the case of São Paulo, the absence of a law was due to its repeal because it was deemed unconstitutional by the STF, as will be seen below. This figure may be an indicator of the strong recurrence of the violent practice of Moral harassment in the workplace, because the legislator is generally guided by factual events, in this case the increase in abusive practices, and then verifies the need for legal regulation on the subject.

Also according to the survey, 81% of the normative acts returned correspond to laws; 7.69% to resolutions; 7.69% to decrees and 7.69% to bills. In this way, the formulation of normative acts in the form of a decree (7.69%) is noteworthy, as these do not have the legal nature of a law, they are instituted by the authority of the Executive, according to the ideological and party political context, and can be revoked when the government project is changed by a simple unilateral act of the head of the executive. In other words, there is no guarantee of effective protection for situations of Moral harassment by means of a decree, given its potentially transitory nature.

In another context, it is worth commenting on the time frame in which the normative acts highlighted in Table 1 were issued, predominantly after the 2000s, a period in which, in Brazil, greater importance began to be given to cases of Moral harassment at work, given that, after the promulgation of the 1988 Constitution, attention was paid to rights related to the human person, such as the inviolability of honor and image⁷.

The first state law to deal with moral harassment at work was that of the state of Rio de Janeiro (Law No. 3.921/2002), which "Prohibits moral harassment at work, within the scope of the bodies, offices or entities of the centralized administration, [...]" (Rio de Janeiro, 2002). Through direct or indirect influence - in view of the growing relevance given to Moral harassment - several other Brazilian states began to have legislation on the subject in question.

The Northeast region has legislation on Moral harassment in all its states, which can be justified by the recent configuration in the country's history of its economic complex, having a strong influence on the formation of the Brazilian domestic market with the consequent increase in the workforce, which has enabled rapid exposure to harmful practices in these environments. In line with this northeastern scenario, legislation on Moral harassment was also identified in all the central-western states, also linked to the economic formation that was previously linked to the southeast, historically organized in the form of mineral extraction, agricultural products and the subsequent use of machinery, concentrating economic activity in the center-south of the country.

⁷ Provided for in article 5, item X of the CF/88.

Another crucial point is the situation in the state that has the largest economy in the country (São Paulo), where the legal provision on moral harassment was revoked due to the unconstitutional character attributed by the STF through ADI 3.980 for the interference of the law in the statute of public servants in the state of São Paulo. Thus, a violation of the exclusive competence reserved to the executive regarding the regulation of public servants was found⁸, corresponding to a formal unconstitutionality.

It is important to highlight the actions of the states of Espírito Santo and Paraná, which regulate thematic weeks within the public administration throughout the year with various approaches to raising awareness about Moral harassment, as well as Santa Catarina, where law 17.742/2019 "Provides for the dissemination of messages aimed at combating Moral harassment within the State Public Administration" (Santa Catarina, 2019).

In these examples, the rules highlight thematic weeks on Moral harassment, which is relevant because they give visibility and raise awareness. In this sense, educational initiatives enhance the development of actions that can help culminate in the specific regulation of the abusive practice. Precisely for this reason, the activities developed during these awareness weeks must not lose sight of the collective debate about proposing specific legal regulations on Moral harassment at work.

With regard to the states that have bills, Roraima has introduced Bill 142/2020. This bill has content limited to cases of Moral harassment in the public or private transport system, the provision is more aimed at the female public, but does not exclude its scope to professionals who perform their duties in this environment, such as drivers and fare collectors. In this way, the legislator missed the opportunity to make a broad regulation covering the multiple possibilities of expression of this violent practice. Meanwhile, the state of Pará has no legislation or bills. This issue is related to the state's historical and cultural elements, as well as its exploitative economic matrix, in which the production base revolves around agriculture and mining.

In this way, it is possible to see that despite the cultural and historical differences that exist in Brazil, the practice of Moral harassment is a reality in work environments, albeit subtle, which contributes to this legislative trivialization, because not even the legislator himself is aware of the broad context in which Moral harassment takes place, given its multiplicity of views. This can be seen from the superficial provisions of the states in which legislation on Moral harassment was found to exist.

Compilation of normative matrix in international experience regarding Moral harassment

⁸ Provided for in art. 61, §1, item II, line "c", of the Federal Constitution.

With regard to the analysis of international experience, we looked at the context of 10 countries with legislation on the subject, in an attempt to list the six continents. Of the 10 countries, seven had the best human development indices and economic power, namely Germany, France, England, Japan, the USA, Sweden and Australia: Germany, France, England, Japan, USA, Sweden and Australia and 3 countries with unsatisfactory performance in relation to the same criteria, namely: Brazil, Colombia and Gabon.

It is therefore interesting to note that the normative survey showed that the existence of legal regulations in relation to Moral harassment in the workplace has an intrinsic relationship with economic formation and levels of human development. Thus, the underdeveloped status of some countries has a direct impact on the implementation of less robust protective regulations, as seen in Brazil, Colombia and Gabon. In these cases, moral harassment finds ample room for reproduction and consequent legislative trivialization, since any action to be discovered in this format would harm the economic development of certain regions that are already at a disadvantage when compared in the national context. The wide range of legislation resulting from the survey is shown in the table below.

TABLE 01: Normative matrix in international experience.

LAWS	COUNTRIES	NOMENCLATURE
Law 2002 - 73, amending the Labor Code; Penal Code.	France	Moral harassment
Protection from Harassment Act. No. 40 of 1997.	England	Moral harassment
Labor Court	Germany	Mobbing
Penal Code; Basic Statute for Public Employees.	Spain	Moral hazard
WorkCover (State of) Queensland Act 1996; Industrial Relations Act 1999; Public Sector Ethics Act 1994; Criminal Code.	Australia	Mobbing
Law 1.010, of 2006.	Colombia	Acoso
Basic Law on Risk Prevention, 1993.	Sweden	Mobbing
Civil Rights Act of 1964	USA	Mobbing
There is no law on Moral harassment.	Japan	Murahachibu, ijime
Law No. 10.216, of 2016	Gabon	Professional harassment

SOURCE: Prepared by the authors (2022).

Given the information shown in Table 1, there is a difference between the Brazilian legal system and the importance given to punishing cases of Moral harassment at work, as the foreign legislation mentioned is mostly national in nature. Furthermore, some of them, such as the legislation in France and Spain, are typified in the Penal Code of those countries.

It is also worth noting the different nomenclatures, which show how, depending on the denomination, workplace Moral harassment is exposed in legislation. In England, *Moral harassment* is referred to as moral harassment, while in other English-speaking countries (USA and Australia), it is referred to as *mobbing*, bringing in the psychological aspect of the individual. In Spanish-speaking countries, the main term is *acoso*, with some variations, such as *acoso moral* and *acoso psicológico*. Many of the nomenclatures are related, as Lassalle (2002) explains, to the real factors of power in each society, which means that legislation is produced according to the intrinsic aspects of people's lives.

In Japan, there is no specific legislation to curb the practice of moral harassment. *ijime*, the name used for these acts, indicates elements that work to maintain discipline and hierarchy, values that are fundamental to the society in question. In this respect, any legislation to combat such practices becomes too complex, as there would have to be a broad study of the limits between the protection of workers' dignity and the cultural and social elements of discipline and hierarchy that are strongly rooted in the country's history.

When looking at countries closer to Brazil, it is worth highlighting the example of Colombia, which is the only Latin American country to have a national law (Law 1.010/2006). The other countries, including within MERCOSUR (Southern Common Market), only have bills, with the exception of Paraguay, which has no current legislation or bill on the subject. This emphasis on the Colombian country is potentially due to the incorporation of the new Latin American constitutionalism⁹ as the foundation of its legal system, which makes it possible to include issues relating to vulnerable groups, such as workers.

It can be seen that the European continent is predominant when compared to other continents in terms of legislation on the subject in question. This is due to the organized and rapid development of industries in these territories, a character stemming from the industrial revolution and rationalization processes, which highlighted the problems of harassment and, therefore, the strong organization of unions and councils in the need to offer some legal protection to workers became more present.

⁹ The New Latin American Constitutionalism is characterized by the formulation of a legal order that values the protection of historically marginalized social sectors such as women, children, young people, the disabled, the elderly, Indians, blacks, peasants and workers. It proposes a break with Eurocentric and uniform standards, preferring multiplicity and pluralism (Barbosa, Teixeira, 2017).

The survey also indicates, to a certain extent, the difficulty that the legislative power has in identifying conduct that is harmful to individuals, even in subtle ways. These formats vary according to the culture adopted by certain communities. The correlation between the legal and socio-cultural spheres is direct. This multifaceted scenario of Moral harassment corroborates the elements of control and surveillance, insofar as the breadth of behaviors that can be included in the context of Moral harassment in the face of the new instruments of the society of control (Deleuze, 2013) that allow communication between different cultures and therefore contact with various behaviors considered harmful in one culture and not in another, makes it difficult to identify and the very process of receiving international instruments into the Brazilian legal system.

The presence of the issue in international conventions or treaties

In order to form a more holistic understanding of the protective matrix around the abusive practice of Moral harassment, we also turned to international treaties and conventions, looking for mentions of Moral harassment or, at least, influences from these devices that reflect on the subject.

TABLE 02: International Conventions/Treaties and the content of Moral harassment.

Conventions/Treaties	Articles
ILO (Convention no. 190)	1st; 3rd to 11th
San José da Costa Rica Pact	5°
Universal Declaration of Human Rights	23
International Covenant on Economic, Social and Cultural Rights	7°
International Covenant on Civil and Political Rights	8°

SOURCE: Prepared by the authors (2022).

This was followed by a textual analysis of the treaties that have been accepted by the Brazilian legal system, whose provisions are influenced by universally accepted values. However, the term "moral harassment" did not appear explicitly, but implicitly, especially in the content of Convention 190 of the International Labor Organization (ILO). This convention establishes a number of ways to put an end to violence and harassment at work, in view of specific issues related to gender-based violence and violence against vulnerable groups. In this sense, the convention is relevant in that it covers contracted, informal or

voluntary workers, as in Article 3 of the Convention's resulting document, in which moral harassment can occur, whether during work or on trips/events in which there is an employment relationship, or through communications also associated with the work environment, which have been facilitated by information technologies.

This approach is accurate in the sense that Moral harassment is not just a practice limited to the workplace, but also to what is related to it, given the influence on human relations and, in this case, on the worker's life, which is affected by physical and/or psychological suffering. It can be seen that this concept broadens the view of episodes and ways in which Moral harassment is carried out, influencing the regulation of the matter by countries in their legal systems.

With regard to legislative support, Article 4 lists how the legislation of the signatory countries deals with the various forms of harassment (including Moral harassment), highlighting the inclusive approach, especially with regard to gender-based violence. In this sense, legislation on the subject must, among other provisions, guarantee policies that deal with harassment at work and effective means of investigating it, in addition to the consequent sanctions provided for by law.

In the meantime, legislative support needs to be broad and concrete, so that the prevention, investigation and fight against moral harassment at work takes place effectively, and not merely the mention of a week to combat and raise awareness of moral harassment at work, which although relevant for its educational and informative nature, when isolated is not enough. This highlights the need for specific, unified regulations on Moral harassment in Brazil that fully cover the issue, with, for example, the full delimitation of conduct considered to be Moral harassment (not necessarily an exhaustive list), individual guarantees to protect victims and the respective sanctions for harassers.

With regard to the other international treaties, the issue was implicitly mentioned in three covenants. The Pact of San José de Costa Rica (PSJCR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) do not explicitly mention the term moral harassment, offering it a relative aspect according to the interpretation given by implication. The Pact of San José da Costa Rica, in its Article 5 (right to personal integrity), in item 1, states: "Everyone has the right to respect for his physical, mental and moral integrity" (Pact of San José da Costa Rica, 1969). The scenario is repeated for the ICESCR, in its Article 7 on work:

The States Parties to the present Covenant recognize the right of everyone to just and favourable conditions of work, ensuring in particular: d) Rest, leisure, reasonable limitation of working hours and periodic paid vacations, as well as remuneration for injuries (International Covenant on Economic, Social and Cultural Rights, 1966).

The ICCPR does not mention harassment either, but article 8 states: "a) No one shall be compelled to perform forced or compulsory labor" (International Covenant on Civil and Political Rights, 1966). From this perspective, it can be seen, for example, that the principle of human dignity in the Brazilian scenario, provided for as a foundation of the Federative Republic of Brazil, together with the right to honor, provided for in item X, art. 5 of the Federal Constitution of 1988, are in line with the provisions of the treaties. This foundation based on the principle of dignity establishes the relationship with rights that are linked to it, as in the case of the right to honour and the right to freedom of expression, which are essential in the discussion of organizational Moral harassment. This stems from the idea that harassment practices form part of a right to be protected from freedom of expression, which also forms part of the list of fundamental rights and corresponds to the real factors of power defined by Lassalle (2002). These aspects contribute to creating fertile ground for conflict between values that are relevant to the democratic rule of law established in Brazil.

Faced with this scenario, the elements of control, whether through the panopticon (Bentham, 2008) or the bap-opticon (Han, 2018), allow the illusory construction of a reality that guarantees freedom and respect for workers; however, what we see is the recurring presence of harmful practices corroborated by mercantile logic, as well as the misinformation of law enforcers about the elements that configure organizational Moral harassment.

In addition, legal certainty is relegated to the background, given that only one of the treaties analyzed expressly mentioned moral harassment. This lack of visibility reflects on the protection of the issue in the Brazilian legal system, which does not have a specific federal rule that addresses the practice of moral harassment at work. It is clear, then, that the lack of specific legislation, in addition to international instruments, whether in relation to the multiple denominations that abuse receives in other countries, or the lack of explicit occurrence in order to guarantee objectivity to the content of international pacts, makes it difficult for the judiciary to identify and consequently establish appropriate punishments for cases of Moral harassment. On the other hand, worker protection becomes a mere formal composition.

CONCLUSIONS

It can be concluded that the instruments of control are still at work in society, no longer in the form of Panoptic control of bodies, but in a new guise, now supported by technology. However, their influence in corporate circles is becoming increasingly evident, making the achievement of business objectives a tangible aspect. Greater power over workers and their activities corroborates abusive attitudes in the workplace, which will give rise to Moral harassment practices, specifically organizational Moral harassment.

Thus, in order to protect labor rights in accordance with the CLT, as well as the social rights referred to in Article 6 of the Federal Constitution (FC), it is necessary to draw up legislation with specific approaches to the issue, given the difficulties encountered in framing abusive behavior and their respective variations in nomenclature according to the analysis carried out. This difficult identification stems from the lack of specific legislation, but also from the relegated approach that such violence acquires, partly because it is considered to be full of subtleties.

The data from the analysis showed that 90% of Brazilian states have specific legislation on Moral harassment, but that this mostly concerns the public sector. Another facet to be considered is the fact that there are major differences between the regions in terms of the existence of normative acts. There are regions in which it is possible to see greater protectionism, given that all states have some kind of regulation on the subject of Moral harassment, such as the northeast and central-west regions. On the other hand, there are regions where there is a lack of rules that reflect this scenario, as seen in the states of Pará and Roraima. This difference can be explained by elements ranging from historical and cultural aspects to the economic matrix of production, which is more or less extractive and exploitative.

In an international context, abusive behavior takes on different forms due to cultural aspects, even adopting different names. Another relevant factor in this picture is the predominance of the European continent in having legislation on the issue in question, which can be explained by the higher levels of social capital, human development (HDI) and economic development in these countries. Also in this respect, it was observed that international treaties/covenants do not directly mention the term Moral harassment in their content, but they can be implicitly identified from the general values that act as principles in most legal systems, including the Federal Constitution. This is why ILO Convention 190 stands out and is relevant in covering the various forms of harassment at work and developing ways to combat the practice and support the victims of Moral harassment.

Therefore, in view of the analyses relating to this study and the conceptualizations discussed, Moral harassment, especially organizational Moral harassment, has an unsatisfactory approach when it comes to its immersion in scenarios of control and power, especially in the face of technological instruments that have expanded and facilitated this context, and it is possible to conclude that the resistance of the Legislative Branch to regulation at the federal level results in the implementation of partial protection in the face of the quest to combat Moral harassment at work.

REFERENCES

[1] ALKIMIN, M. Assédio moral na relação de emprego. Curitiba: Juruá, 2005.

- [2] ARENDT, H. Eichmann em Jerusalém: Um relato sobre a banalidade do mal. São Paulo: Companhia das Letras, 1999.
- [3] BARBOSA, M.; TEIXEIRA, J. Neoconstitucionalismo e Novo Constitucionalismo Latino-americano: dois olhares sobre igualdade, diferença e participação. *Revista Direito e Práxis*, [S.l.], v. 8, n. 2, p. 1113-1142, jun. 2017. ISSN 2179-8966. Disponível em: <<https://www.e-publicacoes.uerj.br/index.php/revistaceaju/article/view/23083>>. Acesso em: 06 mai. 2023. doi:<https://doi.org/10.12957/dep.2017.23083>.
- [4] BAUMAN, Z. Globalização: as consequências humanas. Tradução de Marcus Penchel. Rio de Janeiro: Zahar, 1999.
- [5] BENTHAM, J. O panóptico. Trad. Tomaz Tadeu da Silva, Guacira Lopes Louro e M. D. Magno. 2a. edição. Belo Horizonte: Autêntica, 2008.
- [6] BOURDIEU, P. A escola conservadora: as desigualdades frente à escola e à cultura. In: NOGUEIRA: Maria Alice; CATANI, Afrânio. *Escritos de Educação*. São Paulo: Vozes, 1998.
- [7] BRASIL. Decreto-Lei 2.848, de 07 de dezembro de 1940. Código Penal. Diário Oficial da União, Rio de Janeiro, 31 dez. 1940.
- [8] BRASIL. Lei nº 10.406, de 10 de janeiro de 2002. Institui o Código Civil. Diário Oficial da União, Brasília, 10 jan. 2002.
- [9] BRASIL. Ministério da Saúde. Síndrome de Burnout. Disponível em: <https://www.gov.br/saude/pt-br/assuntos/saude-de-a-a-z/s/sindrome-de-burnout>. Acesso em: 06 mai. 2023.
- [10] CARVALHO, N. Assédio moral na relação de trabalho. São Paulo: Rideel, 2009a.
- [11] CARVALHO, R. Removendo barreiras para a aprendizagem: educação inclusiva. Porto Alegre: Mediação, 2009b.
- [12] DANNER, F. Biopolítica e liberalismo: a crítica da racionalidade política em Michel Foucault. 2011. 168 f. Tese (Doutorado em Filosofia) - Pontifícia 132 Universidade Católica do Rio Grande do Sul, Porto Alegre, 2011. Disponível em: <<https://tede2.pucrs.br/tede2/handle/tede/2874>>. Acesso em: 20 nov. 22.
- [13] DELEUZE, G. Conversações. Trad. Peter Pál Pelbart. 3 ed. São Paulo: Editora 34, 2013.
- [14] FOUCAULT, M. Microfísica do poder. 10 ed. Rio de Janeiro/São Paulo: Paz e Terra, 2019.
- [15] FOUCAULT, M. Vigiar e punir: nascimento da prisão. Trad. Raquel Ramallete. 42 ed. Petrópolis, RJ: Vozes, 2014.
- [16] HAN, B. Psicopolítica: o neoliberalismo e as novas técnicas de poder. Trad. Maurício Liesen. Belo Horizonte, MG. Editora yiné, 2018.
- [17] HAN, B. Sociedade do cansaço. Trad. Enio Paulo Giachini. 2ª ed. Ampliada – Petrópolis, RJ: Vozes, 2017.

- [18] HELOANI, R. Assédio moral – Um ensaio sobre a expropriação da dignidade no trabalho. *RAE-eletrônica*, v. 3, n. 1, art. 12, p. 1-18, 2004. Disponível em: <https://www.scielo.br/j/raeel/a/mDFpdPcL7gR3KJvhbtyr4Zw/?format=pdf&lang=pt>. Acesso em: 06 mai. 2023.
- [19] HESSE, K. *A Força Normativa da Constituição*. Trad. Gilmar Ferreira Mendes. Porto Alegre: Sergio Antonio, Fabris, 1991.
- [20] HIRIGOYEN, M. *Assédio moral: a violência perversa no cotidiano*. 10. ed. Rio de Janeiro: Bertrand Brasil, 2008.
- [21] KICKIDLER. Disponível em: <https://www.kickidler.com/br/>. Acesso em: 29 nov. 2022.
- [22] LASSALLE, Ferdinand. *O que é uma Constituição*. Trad. Hiltomar Martins Oliveira. Belo Horizonte: Ed. Líder, 2002.
- [23] LYON, D. *El ojo electrónico: el auge de la sociedad de la vigilancia*. Madrid: Editora Alianza, 1995.
- [24] MACHADO, R. *Introdução: por uma genealogia do poder*. In: FOUCAULT, Michel. *Microfísica do poder*. 10 ed. Rio de Janeiro/São Paulo: Paz e Terra, 2019.
- [25] MUÇOUÇA, R. *Assédio moral coletivo nas relações de trabalho*. São Paulo: LTr, 2011.
- [26] PACTO de São José da Costa Rica. 1969. Disponível em: <https://www.pge.sp.gov.br/centrodeestudos/bibliotecavirtual/instrumentos/sanjose.htm>. Acesso em: 06 mai. 2023.
- [27] PACTO internacional sobre direitos civis e políticos. 1966. Disponível em: https://www.cne.pt/sites/default/files/dl/2_pacto_direitos_civis_politicos.pdf. Acesso em: 06 mai. 2023.
- [28] PACTO internacional sobre direitos econômicos, sociais e culturais. 1966. Disponível em: <https://www.oas.org/dil/port/1966%20Pacto%20Internacional%20sobre%20os%20Direitos%20Econ%C3%B3micos,%20Sociais%20e%20Culturais.pdf>. Acesso em: 01 dez. 2023.
- [29] RIO DE JANEIRO (Estado). Lei nº 3.921, DE 23 DE AGOSTO DE 2002. Veda o assédio moral no trabalho, no âmbito dos órgãos, repartições ou entidades da administração centralizada, autarquias, fundações, empresas públicas e sociedades de economia mista, do poder legislativo, executivo ou judiciário do estado do rio de janeiro, inclusive concessionárias e permissionárias de serviços estaduais de utilidade ou interesse público, e dá outras providências. Rio de Janeiro, RJ. Disponível em: http://www3.alerj.rj.gov.br/lotus_notes/default.asp?id=53&url=L2NvbnRsZWkubnNmL2M4YWEwOTAwMDI1ZmVIZjYwMzI1NjRIYzAwNjBkZmZmLzNkY2ZjZTAyYjA2YmU1MzkwMzI1NmMyODAwNTM3MTg0P09wZW5Eb2N1bWVudA==. Acesso em: 09 dez. 2022.
- [30] SANTA CATARINA (Estado). Lei nº 17.742, DE 27 DE JUNHO DE 2019. Dispõe sobre a divulgação de mensagem visando ao combate do assédio moral no âmbito da Administração Pública Estadual. Florianópolis, SC. Disponível em: http://leis.ale.sc.gov.br/html/2019/17742_2019_lei.html. Acesso em: 29 nov. 2022.

[31] SARTRE, J. O existencialismo é um Humanismo; A imaginação; Questão de método. São Paulo: Nova Cultural, Coleção Os Pensadores, 1987.

[32] SECRETARIA DE COMUNICAÇÃO DO TST. Cartilha de Prevenção ao Assédio Moral [online]. Pare e Repare - Por um Ambiente de Trabalho + Positivo. 2020. Disponível em: <https://www.tst.jus.br/documents/10157/55951/Cartilha+ass%C3%A9dio+moral/573490e3-a2dd-a598-d2a7-6d492e4b2457>. Acesso em: 07 mai. 2023.

[33] SOBOLL, L. Assédio moral organizacional: uma análise da organização do trabalho. São Paulo: Casa do Psicólogo, 2008.

[34] ZARIFIAN, P. Engajamento subjetivo, disciplina e controle. In: novos estudos Cebrap. n°64, nov. 2002.