

My body, my rules: women's struggle for access to public health services for the accomplishment of safe abortion

Meu corpo, minhas regras: mulheres na luta pelo acesso ao serviço público de saúde para a realização do aborto seguro

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ABSTRACT Human rights are linked to the struggle for human dignity, a context in which feminisms, social movements of struggle to overcome gender, race, and class inequalities must be linked to the struggle of other oppressed groups. The Brazilian Penal Code criminalizes abortion, except when the pregnancy results from rape, when there is a risk of death for the pregnant woman, or in case of pregnancy of an anencephalic fetus. Despite the ban, abortion continues being carried out in all social and racial groups, and in all schooling levels and religions, being one of the biggest public health problems in the Country. The struggle for the right of access to safe abortion is made daily even when it comes to legal abortion, – which is already a right recognized and affirmed by the State. Besides the insufficiency of the health services that perform the procedure, there is no investment in technical capacity, conscientious objection often occurs, and stigmas and prejudices surround the issue, contaminating even the legal norm produced by a secular State.

KEYWORDS Abortion. Human rights. Feminism.

RESUMO Os direitos humanos são vinculados à luta pela dignidade humana, contexto em que os feminismos, movimentos sociais de luta pela superação das diferenças de gênero, raça e classe, devem se vincular às batalhas dos demais grupos oprimidos. O Código Penal criminaliza o aborto, excetuando quando a gravidez é oriunda de estupro, quando há risco de morte para a gestante ou em caso de gravidez de feto anencéfalo. Apesar da proibição, o aborto não deixa de ser realizado em todos os grupos sociais e raciais, níveis de escolaridade e religiões, consistindo em um dos maiores problemas de saúde pública do País. A luta pelo direito de acesso ao aborto seguro se faz cotidianamente inclusive quando se trata do aborto legal – que já é um direito reconhecido e positivado pelo Estado. Uma vez que, para além da insuficiência dos serviços de saúde que realizam o procedimento, não há adequada capacitação técnica, a objeção de consciência ocorre com frequência, e estigmas e preconceitos rodeiam a questão, contaminando até a norma legal produzida por um Estado laico.

PALAVRAS-CHAVE Aborto. Direitos humanos. Feminismo.

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Introduction

Is it possible to assert that access to public health services for safe abortion is included among women's human rights?

It is intended to answer this question affirmatively, characterizing access to public services for safe abortion as a right related to reproductive and sexual health and women's lives, immanent to their condition as human beings with autonomy over their bodies.

With attention to the history of organization and struggle for rights, women have always built and conquered the recognition of their rights in resistance in popular movements, insurgently facing the positive right and enforcing their claims officially denied by the State throughout history.

The criminalization of abortion does not prevent its practice, but creates obstacles to access to the public health service, with serious risks to the physical integrity and life of women who cannot afford the procedure.

Access to public health services for safe abortion is a right to be insurgently built by social movements fighting for the emancipation of women, a historically sidelined group in capitalist and patriarchal society.

From time immemorial, women have been part of a subalternized and oppressed group in various forms of social organization. In this context, patriarchy presents itself as a dominant and structural ideology, whose most perverse feature is expressed with the advent of capitalism, as demonstrated by Shiva¹, while feminisms present themselves as social movements fighting for emancipation and reduction of inequalities.

Rubin²⁽¹⁰⁾ emphasizes that women fit the very definition of capitalism, situated in the "process by which capital is produced by the extraction of surplus value over labor by capital".

Mentioning Adam Smith, Marx³ defines capital as stored labor reversed in the power of government over labor and product to

which nothing can oppose it. According to Rubin², the power of capital over labor and product is amplified in society by concretely reproducing the power relationship by considering as a thing everything and everyone for its conversion into capital.

The capitalist turns money into materials that will be used to create products or become factors in the labor process, incorporating living labor power and transforming "value – past, objectified, dead labor – into capital, into value that values itself"³⁽²⁷¹⁾.

This valuation comes from the capitalist exploitation of the labor force, insofar as the worker's wage is equivalent to half a day, sufficient for his/her survival in 24 hours. However, his/her production refers to an entire workday.

This is what generates the surplus value.

Since it is necessary, however, for the workforce to be continuous and being the worker finite, the wage must also be sufficient to support the worker's family, the children who will replace him/her, as diagnosed by Marx⁴. The wage, according to Rubin², is used for the purchase of goods to be reversed, through additional work, for this subsistence and reproduction of the worker.

It is necessary that someone cook the food, wash and iron the clothes and clean the house, among other tasks. In other words, unpaid domestic work consists of additional work and "key element (*sic*) in the reproduction process of the worker from whom the surplus value is taken"²⁽¹⁴⁾, as it cheapens the workforce. That is to say that unpaid time spent on domestic work for the worker's livelihood values capital.

According to Federici⁵, this domestic work performed by women, depreciated and naturalized, was the pillar of the capitalist organization of labor.

However, why are women, not men, who usually perform household tasks? For Rubin², quoting Marx⁴, immediate needs are historical products that depend not only

on the country's level of culture, but on the conditions, customs, and requirements with which the working class has formed in a particular place. "Unlike other commodities, the determination of the value of the labor force contains a historical and moral element"⁴⁽²⁴⁶⁾.

This historical and moral element, according to Rubin², has established in capitalism a cultural framework of forms of masculinity and femininity that underpin sexist oppression.

Saffioti⁶ emphasizes, that Marx⁴ sees the social determinants of women as the result of a regime of production sustained in the oppression of man by man, by imposing, in the author's view, the overcoming of this capitalist phase of humanity which she calls prehistoric.

It is true that the submission of women to men is not a peculiarity of capitalism, since it occurred in societies that could never be classified as capitalists and long before the fencing.

However, under capitalism, this male supremacy has been improved and rooted in all social relations, starting with the family, which, according to Cisne⁷, fulfills the ideological role in the diffusion of conservatism by promoting its internalization through the education of children⁷.

Engels⁸ described this process as the collapse of maternal rights and "great female defeat worldwide"⁸⁽⁷⁷⁾. According to him, the man also seized the direction of the house, degrading and converting the woman into a servant, slave of lust and mere instrument of procreation. This degradation of women manifests itself since the period of Classical Antiquity, but has been covertly perfected over time.

Federici⁹ mentions the process of social degradation that women went through in the 16th and 17th centuries as a determining factor for their devaluation as workers and deprived of all their autonomy in relation to men, denouncing that

one of those key areas through which great changes were made was the law. Here, in this period, it is possible to observe a constant erosion of women's rights⁹⁽¹⁹⁹⁾.

It is clear that, in bourgeois society, relations are established in an authoritarian and patriarchal way and are based on daily exclusions and oppressions, as stated by Federici⁹. For the author, women are in the condition of being subalternized since the fencing of land, and even more poor women, for whose emancipation, need to overcome patriarchy and capitalism, which are, as Saffioti¹⁰ states, two faces of the same way of producing and reproducing life. According to Federici⁹, with capitalism, the subalternization of women becomes deeper.

It is verified, thus, that the emancipation of women and, consequently, the overcoming of patriarchy must, necessarily, pass through the consciousness of class struggle, the effort to reduce social inequalities, the extinction of the privileges of some at the expense of the sacrifice of women. As Baldez¹¹ states, "in essence, the struggle for the rights of men and women is a struggle against capital".

Patriarchy reflects the typical authoritarian social relationships that are centered on male supremacy. Saffioti⁶ portrays patriarchy as a "two-dimensional process of subjection of a social category: that of domination and that of exploitation". Patriarchal order is guaranteed by everyone, including women and the subalternized ones, who also play the role of dominators in one or another situation, eternalizing the patriarchal conception of social relations based on subordination.

Cisne⁷ describes a process of alienation that produces the naturalization of domination and exploitation, penetrating into the individual consciousness the dominant ideology, patriarchal-racist-capitalist.

From this perspective of subalternity characteristic of capitalist society, women's struggle for emancipation cannot be detached

from the struggles of other oppressed groups, such as workers, those unable to enter the labor market, blacks and groups of Lesbian, Gays, Bisexuals, Transvestites, Transsexuals and Transgender people, in order to break with the patriarchal ideology, surpassing in itself the naturalization of subalternity and opening the way to thinking and acting in a transformative and liberating way.

Therefore, according to Cisne⁷, a feminist militant consciousness must be formed that is radically articulated with the formation of a collective subject for the affirmation of rights.

The perception of women as subjects of rights is imperative, which requires breaking with the most varied forms of appropriation and the alienations that come from them, notably with the naturalization of subservience which is socially attributed to women.

Overcoming this dominant ideology, especially in its objectified and alienated condition by the patriarchal appropriation, Cisne⁷⁽¹⁵²⁾ understands that it is possible, through women's movements, to reach the collective dimension of militant consciousness. It is to say "a strong solidarity conscience" maintained in the confrontation by the collective and organized action, because "if the practice does not reinforce the conscience, the collective character of the action is lost, which becomes disorganized as a movement"¹¹⁽¹⁵⁾.

The construction of feminism as women's political subject goes through the transformation of immediate and isolated claims into a formulation of collective demand, [concludes Cisne]⁷⁽¹⁵⁴⁾.

It's worth saying, according to the author,

[...] with the formation of the feminist militant conscience, women realize that their autonomy and freedom demand the struggle against a structure of social relations of appropriation and exploitation⁷⁽¹⁵⁴⁾.

Abortion: fighting space

Among the most diverse and varied claims and struggles of feminisms, the decriminalization of abortion and the corresponding access to public health services are emblematic.

The Brazilian legal order ensures equality between men and women, access to health, the protection of life and freedom, as well as guarantees the self-determination of bodies. However, also in its Penal Code (arts. 124 to 127)¹², it criminalizes abortion other than in pregnancy coming from rape, with risk of death to the pregnant woman or in case of pregnancy of an anencephalic fetus (decision issued by the Supreme Federal Court in the Claim for Non-Compliance with Fundamental Precept n° 54).

Despite the ban, abortion is still being carried out, as the National Abortion Survey 2016 (PNA), coordinated by Debora Diniz, Marcelo Medeiros and Alberto Madeiro, notes that abortion is a frequent and persistent phenomenon in all classes, social groups, racial groups, educational and religion levels, concluding that 1 in 5 women, at the age of 40, has already had an abortion.

The report elaborated by the Guttmacher Institute, 'Abortion Worldwide 2017: uneven Progress and unequal access'¹³ – 'Abortion Around the World: uneven progress and unequal access', states that every 1,000 women aged 15 and 44 years worldwide there are 35 abortions per year. The rate in developed regions and countries is significantly lower (27 abortions per 1,000 women) compared with developing regions and countries (36 abortions per 1,000 women). Regionally, the highest estimated abortion rate is in Latin America and the Caribbean (44 abortions per 1,000 women), and the lowest rates are in North America and Oceania (17 and 19 per 1,000, respectively).

Singh et al.¹³ emphasize that abortions performed using misoprostol alone are increasing in countries with restrictive laws, such as Brazil.

According to the ‘Abortion Worldwide Report’¹³, the availability of combined medication (mifepristone followed by misoprostol) for abortion gives women a highly effective choice in countries where abortion is largely legal. This option, however, is beyond the reach of 687 million women of reproductive age living where abortion is severely restricted, where only misoprostol – a drug originally intended for the treatment of gastric ulcers, but effective in medical abortion – will be available.

According to Silva et al.¹⁴, the abortive action – oxytocin – of misoprostol was found by finding that the drug stimulates the uterus by inducing contractions and widening of the cervix and is also used in the treatment and prevention of obstetric hemorrhages. Properly applied and properly dosed, it is a safe and efficient means for abortion.

However, according to the ‘Abortion Worldwide Report’¹³, compared to the combined medication protocol, misoprostol use alone is more likely to result in incomplete abortion and continuous pregnancy, even when used correctly, resulting in complete abortion by 75%-90% of cases; while comparable efficacy rates for the nine-week combined medication protocol are between 95% and 98%. Thus, the World Health Organization and the International Federation of Gynecology and Obstetrics recommend the use of misoprostol alone only when mifepristone is not available.

The research lists multiple clandestine abortion methods, around the world, that pose a high risk to the health, physical safety and life of women ranging from insertion into the vagina or cervix of sharp objects, macerated herbs and liquids – from ingesting laxatives, beverages, detergents, bleach and alike – to manipulating the abdomen, massaging or tapping, traumatic or injurious physical activity or experimenting with other folk techniques, such as inserting a tube to blow air into the womb to induce labor or place a hot stone in the abdomen to “melt” the fetus¹³⁽²²⁾.

This wide range of clandestine abortion

methods – highly risky – has narrowed down mainly to the use of misoprostol as a medical abortion. In the late 1980s, Brazilian physicians pioneered clinical outcomes in the treatment of women who had learned about misoprostol by word of mouth and received post-abortion hospital care. The occurrence of less severe symptoms among post-abortion patients has been attributed to the increasingly widespread use of misoprostol alone as an abortion drug method, according to the ‘Abortion Worldwide Report’¹³.

Zordo¹⁵ asserts that misoprostol has wrought a ‘revolution’ in the work of obstetricians-gynecologists and in the lives of many women, given the safety and effectiveness of drug use, lowering maternal morbidity and mortality rates in countries with restrictive abortion laws. Nevertheless, “half of the women who had abortions had to be hospitalized to finish it”¹⁶, which reveals the remaining risks to women’s lives and health.

Nevertheless, the National Health Surveillance Agency (Anvisa) issued Resolution (RE) n° 753¹⁷ prohibiting the distribution, dissemination and marketing of misoprostol, which constitutes an obstacle to access to information, with serious consequences even for women who are entitled to perform legal abortion, as in the case of pregnancy resulting from rape that, without information about the medication, end up undergoing more expensive, long and risky procedures, often with physical suffering in true obstetric violence, according to González Vélez¹⁸.

Zordo¹⁵ emphasizes that, without easy access to information on safe Misoprostol dosing regimens, women use other abortifacients, depending on post-abortion care services in public maternity hospitals, where they often face stigmatization and discrimination.

González Vélez¹⁸ adds that this misoprostol regulation spreads other restrictions such as compulsory notification of drug use with the active principle of misoprostol, suspension of advertising and discussion, or even banning messages about the drug on internet sites.

In this context, the 2016 PNA demonstrates that criminalization does not meet the purpose stated in the norm:

On the one hand, it is not able to reduce the number of abortions and, on the other hand, it prevents women from seeking the necessary health information and follow-up to be safely performed or to plan their reproductive life to avoid a second event of this type¹⁶.

Prohibition marks social inequality: poor women cannot obtain paid service, while those from the ruling classes enjoy the privilege of information, have access to safe medicines, and can afford to pay for aseptic intervention in safe and secure hospitals facilities and safe from unwanted police developments.

Women from poorer classes endure the social deficit in a subordinate situation to all men and women of the privileged classes. As Franco¹⁹ points out, historical and institutional male chauvinism is the basis of Brazilian social formation; however, black and slum women face interdiction, domination and restriction of rights before other women in the city.

The criminalization of abortion breaks with gender equality and deepens the social gap between women in the ruling classes and those who are decapitalized.

In addition, the insecurity of health professionals in the legal prohibition is undeniable²⁰, without forgetting the moral and religious issues that deeply permeate the theme.

Attentive to Baratta's teaching²¹, it is observed that criminalization contributes to the social stigmatization of women who have abortions, resulting in the dissemination of obstacles to access to public health services, either through the prohibition of information about misoprostol or the intimidation of health professionals, or by the patriarchal ideology that ultimately raises conscientious objections from physicians without prompt substitution, as demonstrated in the 'Abortion Worldwide Report'¹³.

As one can see, the criminalization of

abortion reflects the dominant interest in bourgeois and patriarchal society. It denies access to the public health service with increased risk to the lives of women, in serious violation of their human rights and fundamental to self-determination, the decision on their family planning, their choice of individual project, information, health and even life, which is even more striking in relation to women in the decapitalized classes, because the Unified Health System (SUS) is prevented from providing medical services for abortion outside the restricted legal hypotheses.

My Body, my Rules: women's struggle for access to public health services for the accomplishment of safe abortion

The history of the construction of women's rights is marked by the struggle organized in social movements. Small achievements marked by much effort and resistance facing strong conservative opposition.

On the other hand, the positive law is aimed at maintaining class escalation, subordination and exploitation, reflecting on patriarchal relations.

Given this, the conquest of rights by women operates from social disobedience – which guarantees, today, for example, the possibility of choosing their own husbands – to the counter-hegemonic insertion of guarantees in legislative texts. In this sense, warns Franco¹⁹ that

[...] moments of 'social welfare' were passages in the history of the Country, but they are fundamentally marked by conquests and not by concessions of the dominant power¹⁹⁽⁹¹⁾.

According to Fonseca²², the effort to achieve the reproductive and sexual rights of women dates back to 1789, reflecting the ideals of the French Revolution of freedom, equality and

fraternity²³, with commitment to liberation initiatives on several fronts, and its role in the struggle for the abolition of slavery.

In the early XX century, revolutionary movements proliferated; and, with them, women's struggles for their rights, occupying previously forbidden spaces – such as troops on the battlefield – and performing tasks previously considered exclusive to men, as pointed out by Melo and Thomé²⁴.

They emphasize the profound impact of early XX century revolutionary changes on women's subjugate family structures, advancing civil rights and accelerating claims for education and labor, raising expectations for the achievement of other rights and boosting the organization of the campaign for women's suffrage in the 1930s.

In Russia, as the authors report, the emancipation of women goes through Bolshevik precepts such as free union, wage labor, and the progressive overcoming and ending of the bourgeois family model, resulting in an acceleration of sexual and reproductive rights.

With effective participation in the Russian revolution, women gained recognition of rights, became electors and eligible, obtaining the legalization of divorce as well as civil marriage, and the peasants have rights to the land. Explains Silva²⁵ that Russian law prevents the husband from imposing on his wife his name, domicile or nationality, establishes child support, regulates the protection of female labor and establishes maternity leave. The author adds that “abortion is legalized in 1920 and in 1926, still under the libertarian impulse, marriages and ‘de facto unions’ are equal”²⁵⁽⁴⁹⁾.

Davis²⁶, recognizing that women around the world are a political power capable of threatening the global forces of backwardness and oppression, points out that

[...] the remarkable progress that has been made towards the social, economic and political equality of Soviet women has resulted from a revolutionary social reorganization in accordance with the needs and aspirations of the working class²⁶⁽⁸⁵⁾.

Fonseca states that, although the struggle of women had begun much earlier, it gained formal space in 1948, with the Universal Declaration of Human Rights²⁷⁽²³⁾, with the consecration of equal rights for men and women and the promotion of “social progress and better living conditions in a wider freedom”. Barsted²⁸ states that, for years, international organizations have not dealt with the violation of women's human rights.

The author²⁸ states that, in the 1960s, a series of international conventions introduced the categories ‘men’ and ‘women’ when dealing with various themes. Among them, Barsted²⁸ underlines the Pact of San Jose Covenant of Costa Rica²⁹ (American Convention on Human Rights), the International Covenant on Economic Social and Cultural Rights³⁰ and the International Covenant on Civil and Political Rights³¹, which, however, had little impact on our submitted country that was under a military dictatorship.

Fonseca²² emphasizes that, in the 1960s, advances were made with feminist social movements, such as sexuality, contraception and sterilization; and, in the 1970s, the campaign for self-determination over their bodies.

For Fonseca²², the first wave of feminism, from the nineteenth to the twentieth century, was marked by egalitarianism, seeking, from the 1960s, the recognition of differences in the claim of reproductive rights, in addition to issues related to homosexuality.

In Brazil in the 1980s, there was a significant advance in the process of gaining rights with the democratic opening and the promulgation of the Constitution of the Republic of 1988³² establishing the right to health and the individual guarantee of equality without any kind of discrimination, with evident repercussions on women's sexual and reproductive rights.

The Feminist Movement joined forces with the Brazilian Sanitary Reform Movement, resulting in the incorporation of sexual and reproductive health precepts as health assumptions, later included in the constitutional text as citizenship rights and duty of the State.

Thus, themes such as abortion, contraception, sexuality, among others, were highlighted, contributing to their insertion in the human rights conjecture²²⁽²⁵⁾.

It should be noted, therefore, that comprehensive sexual and reproductive health care, life free from preventable maternal death, private life, personal integrity, self-determination over their bodies with autonomy to decide on reproduction without coercion, discrimination or violence, information and access to services are women's human rights, among many others that make up a circle that protects their dignity.

Nevertheless, the Brazilian Penal Code, in its arts. 124 to 127³³, defines abortion as a crime, expressly excluding (article 128) from the scope of the incriminating rule the abortion practiced as a result of risk to the woman's life, when pregnancy is due to rape or in case of pregnancy of fetal anencephaly – in the latter case, due to the decision issued by the Federal Supreme Court in the Claims of Non-compliance with a Fundamental Precept n° 54 on April 12, 2012³⁴.

It should be noted that despite the right expressly recognized in the cause of unlawful exclusionary provided for in art. 128 of the Penal Code, women with the right to abortion in pregnancy resulting from rape only gained access to public health service almost four decades after the legal permissive period, since the first centers of attention were all private and charged an exaggerated price.

In 1986, at the Dr. Arthur Saboya Municipal Hospital, in São Paulo, the Public Program for the Termination of Pregnancy was implemented, whose wide availability, as Fonseca asserts²², was due to the pressure of feminist movements that argued with the consolidation of reproductive rights at the International Conference on Population and Development (ICPD), in Cairo, in 1994, and at the World Conference on Women, in Beijing, in 1995.

In 1999, the Ministry of Health issued a Technical Standard for the Prevention and

Treatment of Sexual Violence Against Women and Adolescents, extended in 2005 and 2012, stating that the story reported by women victims of rape or their legal representative is sufficient for performing the medical procedure, regardless of police record of occurrence. According to Fonseca²²⁽⁶⁰⁾, when publishing his book, there are only 65 referenced services in the Country.

According to the Ministry of Health, any and every health unit with an obstetrics service has an obligation to perform abortion in cases permitted by law. However, this is not what actually happens, since

[...] the media and studies in the area propagate that the rates of women assisted are relatively low, contradicting, therefore, the data on hospitalization for complications of abortions possibly performed clandestinely²²⁽⁶¹⁾.

The author²² reveals the lack of training of health professionals, whose training does not prepare them to deal with issues such as abortion, sexual and domestic violence, as well as all the gender issues related to public health demands.

Furthermore, abortion involves a number of cultural, moral and religious implications, stigmas and prejudices that affect the performance of health professionals with direct influence on statements of conscientious objection, ensured by the Code of Medical Ethics. According to Fonseca²², the obligation of all units with midwifery services to perform legal abortions is not enough to guarantee greater access of women to the public health service for termination of pregnancy.

All of these obstacles drive women into clandestine abortion because time is another complicating factor, as after 20 weeks of gestation she may not be able to perform the procedure, as Fonseca²² points out, which highlights the ambiguity between the permissive legal norm, the punitive framework and public policies.

Fonseca underlines that the legislation is

impregnated with “cultural factors, historically determined by the patriarchal system, as well as religious factors despite being a Secular State”²²⁽⁶⁴⁾, so that the theme of legal abortion exercises power and control over women’s bodies by different segments: state and its financial interests, medical category, courts, churches, family, among others.

Secularism is a social achievement recognized and expressed in the 1988 Political Charter³² which enshrines social, cultural and religious diversity, adopting in its art. 1, item III, human dignity as the foundation of the Republic and establishing in art. 3rd, as the fundamental objective of the Federative Republic of Brazil, to promote the good of all, without prejudice of origin, race, gender, color, age and any other forms of discrimination. In art. 19 of the Magna Carta, secularity is expressly delineated by prohibiting the State – considered in the broad sense – to establish religious cults or churches, to subsidize them, to make them difficult to operate, or to maintain with them, or their representatives, relations of dependence or alliance.

The secularism of the State goes back to the French Revolution²³, which had the effect of separating the Church from the state, which until then had exercised state, economic and religious powers together.

Abreu informs that Minister Celso de Mello, in his vote in the judgment of the Non-compliance with a Fundamental Precept n° 54³⁴, points out that secularism has been affirmed in the Brazilian State since 1891, stressing that

[...] the State is forbidden to interfere in the religious faith of individuals and neither religious faith should prevail over the others, which produces, in our society, the effect of pluralism²²⁽¹⁷³⁾.

According to the author²², Minister Celso de Mello conceives secularism as an obstacle to retreat, an instrument to combat obscurantism and the possibility of particular religious

conceptions to hinder scientific knowledge and its benefits for the dignity of life itself.

As Brazil is a secular State, the legislation has no legitimacy to treat a woman differently from the concept of guilt, which is characteristic of the Christian religions, severely criminalizing voluntary abortion and ‘pardoning’ those in which women are seen as victims because they are punished for circumstances of pregnancy, which undeniably reflects the patriarchal ideology of female body possession and denial of autonomy to women to decide on it.

It should be remembered that the legal prohibition of abortion stems from a standardization that represents the conservative forces of society; and all feminist movements for the decriminalization of abortion remain permanently in dispute with these conservative forces of patriarchy.

It is the organized social forces that build and even suppress rights. At present, around the world, there is a noticeable movement to suppress social rights conquered and even formally recognized in laws.

An example of this is the approval, by the Special Committee of the Chamber of Deputies, of the Amendment Proposal to the Constitution n° 181-A, of 2015, coming from the Federal Senate, which ‘amends item XVIII of art. 7 of the Federal Constitution to provide for maternity leave in the event of premature birth’, and a provision was introduced in the text stating that ‘life begins with conception’, criminalizing any abortion, including when the pregnancy results from rape.

However, there are still popular forces of political pressure to expand the right to legal abortion, either through the social organization with support networks such as the ‘Socorristas em red – Feministas que abortamos’, or through the institutional way, through legal measures before the Federal Supreme Court, such as the Claim for Non-Compliance with Fundamental Precept n° 442 and *Habeas Corpus* 124.306 – RJ¹².

The First Panel of the Supreme Federal

Court granted the order in *Habeas Corpus* n° 124.306 – RJ¹², giving interpretation according to the Constitution to arts. 124 to 126 of the Penal Code to exclude from its scope the voluntary abortion carried out in the first quarter in the form of the conducting vote-review, of the mining of Minister Luis Roberto Barroso. The minister stressed that criminalization violates the sexual and reproductive rights of women, and the State cannot oblige them to maintain an unwanted pregnancy with disregard of their autonomy, in addition to making their physical and mental integrity vulnerable. For the judge, the criminalization of abortion defies the guarantee of equality, emphasizing that it affects women from different social classes differently, since the poor do not have access to private doctors and clinics, using the SUS. As a consequence, the number of self-mutilation, serious injuries and deaths has multiplied¹².

In another turn, the initial of the Claim for Non-Compliance with Fundamental Precept n° 442³⁵, still pending before the Federal Supreme Court, indicates as violated precepts the fundamental principles of human dignity, citizenship and non-discrimination, as well as the fundamental rights to inviolability of life, liberty, equality, the prohibition of torture or inhuman or degrading treatment, health and family planning, all protected by the Federal Constitution³³, so that the partial non-reception of arts. 124 and 126 of the Penal Code (Decree-Law n° 2.848/1940)³⁶, excluding from the scope of incidence induced and voluntary abortion within the first 12 weeks, specifying the autonomy of women, without the need for state permission, as well as guaranteed to professionals of health the right to perform the procedure.

As can be seen, at a moment of serious risk of losing women's fundamental human rights, the mobilization and organization of feminist movements to build the right of access to safe abortion is of utmost importance, denouncing the obstacles to rights already recognized and pressing for its expansion in view of the

illegitimacy of criminalization by the positive, bourgeois and exclusionary right par excellence.

In this process of daily struggle, the proposal for alternative production of law through social organization in support networks arises, with direct help to women who decide to abort and dissemination of quality information about contraceptive methods, hypotheses of legal abortion, establishments referenced or not able to perform the procedure, efficacy, dosage, risks and advantages of the use of misoprostol, writing written material and audiovisual media for social networks, and promote debates in the streets, neighborhood associations and other popular collectives organized.

The concrete struggle in the construction of the right of access to safe abortion cannot neglect the importance of infiltrating counter-hegemonic actions in the institution, through the presentation of popular proposals for legislative change, articulation with parliamentarians to stop the setbacks inserted in the projects that have already been implemented are pending and the filing of judicial measures in the Federal Supreme Court, as, indeed, has already been done.

With these assumptions, it is necessary to recognize that social and popular organizations of resistance to the construction of the right of access to safe abortion, health and, consequently, equality and life³⁷ restructure the political field, challenge the bourgeois social organization and shake the certainties and conformations of patriarchy.

Women, in struggle, reposition themselves as autonomous ladies of their will and body, in a revolutionary process of building rights.

Final considerations

It was sought to characterize access to public services for abortion as a human right of women, illegitimately denied by the legal system in defining it as a crime.

It can be said that the legislation that

criminalizes abortion is impregnated with patriarchal values, whose scope overflows the moral, religious, behavioral and even patrimonial issues, among many others that make up the whole ideological and organizational spectrum of society and underlie the relations of subalternity.

Since the juridical order reveals the very expression of bourgeois society and, as such, an indispensable instrument for the maintenance of subordination and exploitation relations immanent to the social ladder, safeguarding the privileges of the ruling groups, it ends up hindering and even criminalizing conduct inserted in the society's sphere of rights yearned for and claimed by subalternized groups, unveiling their illegitimacy.

It happens that abortion is a right claimed by women, as a subalternized group, emerging the realization of the need for organization in popular movements to fight for the conquest, recognition and enforcement of the right of access to safe abortion.

In bourgeois society, it should be stressed, patriarchy is characterized as the dominant ideology of male supremacy that found support in the capitalist system for the intensification of the violence and oppression that distinguish it.

Fighting for women's emancipation, overcoming patriarchy, and building rights claimed by non-ruling groups is necessarily a battle against capital.

To this extent, the struggle of women will only succeed in reducing gender inequalities and social emancipation if there is engagement in the struggles to overcome all forms of oppression, subordination and exploitation.

Specifically addressing the issue of abortion, it is found that women have obtained rights formally recognized in international documents to which Brazil is a signatory, as well as in the Federal Constitution itself, whose letter ensures equality between men and women and the right to health and life with dignity.

Nevertheless, paradoxically, despite the recognition that women's sexual and reproductive rights are human rights, national law

criminalizes abortion, except in cases of life-threatening pregnancy, rape pregnancy and when the fetus is anencephalic.

However, the ban does not prevent the practice of abortion, resulting in an obstacle to public health services, with direct repercussions for decapitalized women.

Even in cases of abortion authorized by law, there are impediments to the realization of the right, with few units referenced, there is no publicity about care in any unit with obstetric service, conscientious objection of professionals and lack of technical training to deal with victims of sexual violence.

It should be emphasized that, from criminal legislation to the complete absence of effective public policies, there is the impregnation of moral and religious values in acts of the Brazilian State that were constitutionally based on secularism. The criminalization of abortion has as its direct consequence the increased risk to life, in serious violation of women's human rights, including demarcating social inequality, with barriers to public health service for poor women.

It is worth mentioning that the feminist movements for the decriminalization of abortion remain permanently in dispute with the conservative forces, especially in the current historical moment in which we are experiencing the suppression of social rights conquered and even formally recognized in the laws and exemplified by the proposal to constitutional amendment to define early life with conception, possibly, criminalizing even abortion in pregnancy derived from rape.

Given these assumptions, the alternative production of the right through social organization in support and relief networks for women who choose to abort is urgent, disseminating quality information about contraceptive methods, the possibility of legal abortion, the institutions capable of perform the procedure, effectiveness, dosage, risks and advantages of using misoprostol, preparing written material and audiovisual media for social networks, and promote debates on the

streets, neighborhood associations and other organized popular collectives.

It is concluded that social and popular resistance organizations for the construction of the right of access to safe abortion do wage revolutionary struggles, restructuring the political field, challenging bourgeois society and undermining the values and conformations of patriarchy. Women form a collective feminist militant consciousness, break their own conception of themselves and realign social relations, repositioning themselves as

autonomous ladies of their existence, their will and their body.

Collaborators

Lopes SDN (0000-0001-5048-7660)* and Oliveira MHB (0000-0002-1078-4502)* contributed to the design, planning, analysis and interpretation of the data, drafting, critical review and final approval of the article. ■

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