

Sexual violence and other offenses against women with disabilities

Da violência sexual e outras ofensas contra a mulher com deficiência

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ABSTRACT The essay aims to analyze two parameters that underpin violence in Brazil: being a woman and with disabilities. It discusses how disability enhances the social invisibility of women. The theoretical framework is in the fields of gender violence and disability, the concepts of femicide, the field of disabilities and their models and attitudinal accessibility and invisibility. The discussion, in an interdisciplinary literature review, develops under the concepts of socio-legal invisibility and discrimination. The normative diplomas on the theme and reality are analyzed from the following perspectives: socio-legal invisibility, intangibility in public health, absence and exclusion. It is concluded that violence against women with disabilities is more invisible in the social and legal context, considering that both gender and disability enhance it and create the need for public policies to face serious violation of human rights.

KEYWORDS Disability evaluation. Gender-based violence. Human rights.

RESUMO O ensaio teve como objetivo analisar dois parâmetros que sustentam a violência no Brasil: ser mulher e com deficiência. Discute-se a forma de como a deficiência potencializa a invisibilidade social das mulheres. O referencial teórico está nos campos da violência de gênero e da deficiência, nos conceitos de feminicídio, no campo de deficiências e seus modelos e da acessibilidade atitudinal e invisibilidade. A discussão, em revisão de literatura de caráter interdisciplinar, desenvolve-se sob os conceitos de invisibilidade sociojurídica e de discriminação. Os diplomas normativos sobre o tema e sobre a realidade são analisados nas seguintes perspectivas: invisibilidade sociojurídica, intangibilidade na saúde pública, ausência e exclusão. Conclui-se que a violência contra a mulher com deficiência é mais invisibilizada no âmbito sociojurídico, considerando que tanto o gênero quanto a deficiência a potencializam e criam a necessidade de políticas públicas para debelar grave violação aos direitos humanos.

PALAVRAS-CHAVE Avaliação da deficiência. Violência de gênero. Direitos humanos.

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Introduction

On a daily basis, we face different situations involving the themes of gender, disability, violence; but, in fact, social beings, us, human beings, often do not (co)live or perceive the difficulties faced by people with disabilities, which materializes a distance from understanding what these concepts are.

From time to time, the difficulties are exacerbated, as they involve multiple factors in the same case, such as the worldwide phenomenon of gender-based violence on victims with disabilities.

Violence against women is a serious, current, complex problem, of multiple faces and, according to Sasaki¹, worldwide scale. It involves abusive acts and is an event suffered by certain human beings, on account of the female gender. These include genital mutilation, physical, emotional and sexual abuse, incest, forced abortion, honor killings, dowry-related violence, forced marriage, human trafficking, forced prostitution and obstetric violence, among others, some of which are treated as torture by the United Nations Organization (UN)².

Because they occur, quite often, in the family environment, they are not reported, or the victim cannot find a way out of the vicious circle of gender-based violence that is independent of social class, creed, race or higher level of schooling³.

Historically, women have suffered discrimination and marginalization in Brazil and worldwide. For women with disabilities, the picture is more serious. The culture of naturalization of violence against women and the invisibility of the problem are essential parts of the violence itself and, in some places, there are true pandemics of women's deaths; and, specifically in Brazil today (about 71% of femicides and attempts have the partner as a suspect)⁴. These crimes were named femicide, meaning the death of women for reasons of female condition.

The cornerstone of the problem of

gender-based violence lies in generic patriarchal ideology, with gender and violence as precepts⁵. The State participates in the problem by reinforcing patriarchal rule when relying on hegemonic groups. The intersection between gender and disability is still a theme under construction for the social sciences and public policies⁶.

To conceptualize 'disability', the body factors, the structural barriers of society and the specific factors of physical alterity as an individual difference are integrated, demanding from society the inclusive incorporation of different lifestyles. It is an evolving concept and recognized by the Convention on the Rights of Persons with Disabilities, ratified by Brazil in 2009⁷.

Until the 1970s, disability was defined worldwide only by the biological model and was understood as an individual problem, a stigma, a natural handicap and, even, an abnormality. English sociologist Paul Hunt influenced the creation of a framework from which the understanding of disability was changed beyond the biological model. The Union of the Physically Impaired Against Segregation (UPIAS) was created, which sought to overcome the biological model of explaining disability and constituted the theoretical framework of the Social Disability Model.

Thus, disability became an experience of oppression and social imposition. From the female perspective, several challenges were faced, including, the necessary paradigm shifts regarding inequalities suffered by disability and gender discrimination.

Women with disabilities, in addition to having less access to protection against sexual violence and other offenses are, often, less able to defend themselves. Offenders are, commonly, providers, caregivers or people they depend on for physical or financial help. The fear of denouncing is enormous, also because there is a tendency that their denunciations will not be given credit and, also, because there is not sufficient attitudinal accessibility for the State to become aware of these facts.

Another problem that aggravates the situation of women with disabilities and victims of violence is the incipient public health care, either by the lack of policies and agendas that address them, or by omission and low coverage of relief procedures.

It is important to demonstrate socio-legal invisibility in the forms of sexual violence and other offenses against women with disabilities and to specifically indicate the factors that increase this socio-legal invisibility and the possibility of a justice project that minimizes extreme inequalities.

Violence against women with disabilities and socio-legal invisibility

Some national and international legal acts deal with gender violence and, in a few, on victims with disabilities, as a few statistical studies carried out in order to better understand the phenomena studied.

The statement of the Declaration of the Rights of Woman and the Female Citizen⁸, in 1791, by Olympe de Gouge, alongside the Declaration of the Rights of Men and Citizens⁹, in 1789, during the French Revolution, is considered the starting point of the struggle for the rights of woman in modernity, after which feminist, trade unionist and suffragist movements wielded various flags for equal rights between genders.

According to the Latin American Model Protocol for the investigation of violent deaths of women (femicides/feminicidas)¹⁰, the cultural marks are the notion of masculinity associated with domination, the rigidity of gender roles, the idea of male property, the approval of violence as a mechanism for resolving everyday conflicts, social consent to physical punishment against women, the idealization of romantic love, the disregard of women's qualifications.

The Convention on the Elimination of All Forms of Discrimination against Women

(Cedaw)¹¹, held by the UN, inspired by the Universal Declaration of Human Rights², defines discrimination against women as sex-based exclusion to nullify the enjoyment of their human rights and freedoms.

Another important step in this journey was the adoption by the General Assembly of the Organization of American States in 1994, ratified by Brazil, in 1995, of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, also known as Convention of Belém do Pará¹².

The 1990s still produced two significant international acts to combat the violation of women's rights: the first of them, of 1994, is the Platform of Action of the Fourth World Conference on Women¹³. The second diploma, the 1995 Beijing Declaration and Platform of Action¹³, is the policy document in which governments commit to implementing a platform of action.

Between the late 1990s and the early years of the 21st century, came the decrees aimed at reducing rates of violence against women: Decree n° 1.973/1996¹², which promulgates the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, completed in Belém do Pará, on June 9, 1994; and Decree n° 7.958/2013¹⁴, which establishes guidelines for the care of victims of sexual violence by public safety professionals and the Unified Health System (SUS) care network.

The Latin American Model Protocol for the investigation of violent deaths of women (femicides/feminicidas)¹⁰ has relevance in analyzing possessive relations as motivators of these crimes as a reflection of a culture of hatred and discrimination against women and a sign of the failure of the criminal justice system to punish those who commit these crimes.

However, Law n° 11.340, of August 7, 2006, Maria da Penha Law (LMP)¹⁵ is, truly, the milestone that reinforced the feminist approach to criminalization and multidisciplinary treatment to confront domestic violence, which brought significant consequences for public policies developed since then.

Another relevant step in this trajectory was the creation of Specialized Women Police Stations (Deam), house-shelters, reference centers, Call Center 180. These are support networks that have proven to be fundamental, not only for the immediate protection of women in the face of the offense suffered, as well as the possibility of the woman reframing herself in search of new living conditions. Incidentally, the Violet Project, of the State Court of Justice of Rio de Janeiro (TJRJ), has also greatly contributed to the care of victims, mainly due to its roaming capacity, in a differentiated form of victim care. In recent days, the ‘Maria da Penha Patrol, guardians of life’ was created, by the State Military Police of Rio de Janeiro (PMERJ), as an initiative led by the TJRJ and the Rio de Janeiro State Government.

Recently, another amendment added device to art. 12 of the LMP¹⁵, through Law n° 13.836¹⁶, of June 4, 2019, making mandatory the information on the condition of disabled person of the woman victim of domestic or family assault.

One must talk about human rights as civilizing achievements and the serious violations of them, with the inequalities perpetrated against people with disabilities. They do live, through the ages and around the world, a true ‘Ignored Epic’.

It is possible to admit that concerns about the disabled person, especially when dealing with a disabled woman, reflect the protection of human rights. They sound like self-evident rights, mentioned in the United States Declaration of Independence and the French Declaration of the Rights of Man and of the Citizen. However, self-evidence, in itself, requires conceptual basis to make clear which rights are being referred to and protected.

Sen¹⁷ presents the idea of the participation of individuals when they are able to do something so that the freedoms perceived as relevant are not violated. The author refers to a universal ethical requirement and considers that, in application in a real case, there may be ambiguous arguments, which will not necessarily disregard the force of the argument for performing an act.

Example: Catherine Genovese case, from New York, in 1964. The woman was beaten to death; and the neighbors, even hearing her cries, did nothing to interfere and stop the aggression. Catherine’s freedom not to be assaulted was violated, as well as the duty of more than 30 people who watched the aggressions and did not help her was violated.

Brazil, recently, experienced a similar situation when a middle-class woman was brutally beaten in a Barra da Tijuca condominium. According to the investigation data, only after five hours of violence did neighbors call the police. A crime of brutal femicide was committed, in the presence of representatives of the social culture of voluntary blindness.

A good reason to understand the rights of women with disabilities as human rights and the need for their protection throughout society is the double vulnerability of women with disabilities, as women and as persons with disabilities. These two vulnerabilities will be addressed.

With regard to persons with disabilities, these are long excluded, have already been condemned to death, considered cursed, a burden to many, deadweight for society, that is, almost people, as expressed by Victor Hugo in ‘The Hunchback of Notre Dame’, through the character Quasimodo – a quasi-person –, a mockery target. He who, with no place in society, was left no choice but exclusion.

From the earliest cultures, the melancholic saga of people with disabilities was already beginning, as reported by Otto Marques:

The survival of people with disabilities here in Brazil and in much of the world, in the vast majority of cases, has been a real epic. This epic [...] – a true melancholy saga – as it was in all cultures for the many centuries of man’s existence. Ignored, not because of accidental ignorance or lack of information, but because it is not desired to be aware of it¹⁸⁽⁹⁹⁾.

Following the example of the Hebrews, Egyptians and Greeks: Noah, as described by

'The Book of Enoch', would be Albino and was almost rejected by his father; Moses had difficulty speaking clearly, and Pharaoh Akhenaten, the first monotheistic King of Egypt, who was epileptic and who, during crises, to avoid being seen, had a choir of blind men at his disposal; and among the greatest Greek poets, Homer, who, according to records, was blind.

Some of the most renowned Philosophers have even entertained the idea of the extermination of people with disabilities, including children. In philosophizing, Plato stated: "And as regards those who have received a poorly organized body, let them starve to death"¹⁹⁽⁴⁸⁾.

The Bible²⁰ also reports several miracles of healing by Jesus, for example: the healing of the paralytic of Bethesda, described in the gospel of John 5.1-15. Christian ideals have brought to the world a charitable way of seeing disability. However, people with disabilities do not want charity, they want to fully exercise equal opportunities.

Disability, in addition to diseases or injuries in the body, occurs due to the inequalities imposed by the environment on a body with impediments, a natural disadvantage that must be repaired to return to normal, or be, only, part of human diversity, according to Diniz²¹. In the biomedical model, either the body changes or will be unwanted by society. In the social model, it is understood that oppression of the body need not be the rule, depending on what is meant by normality and how it reacts to different bodies.

The same social place in which this asymmetry in gender relations inhabits gives rise to what Santos²² calls the metonymic reason, according to which there is only one logic that governs both the behavior of the whole and that of each of its parts. There is therefore a homogeneity between the whole and the parts and they do not exist outside the relation to the totality.

Only nowadays, the concept of disability begins to be discussed and revised. It has as an 'umbrella' concept. The traditional way of thinking the different in a polarized manner must be contradicted, not by its immanence,

but by the relation of opposition in the face of otherness, which classifies the person for what he/she is not. This way of thinking takes place in the mere biomedical paradigm.

The social model, thus, undertakes the possibility of giving new meaning to the understanding of difference associated with exclusion, introducing the perspective of diversity that presupposes inclusion, according to Diniz²¹. In this way, the author explains that, disability has become a political concept, and a whole set of actions has been discussed with a view to re-meaning the person with disabilities and their context.

The subject of sexual violence and other abuses against women with disabilities permeates various knowledge. From the concept of disability and its consequences to gender violence and its feedback culture of all kinds of abuse towards the vulnerable person.

Evilness and offenses committed against such women are unspeakable. Sometimes, they are deprived of food, hygiene and even their aid instruments such as canes and crutches. They are subjected to the sexual lusts of their own caregivers. Not infrequently, they are still obliged to say thank you, because, after all, 'they are doing you a favor' in having a sexual interest in you.

Many victims do not even realize that they are being constantly abused, thinking that violence and dehumanization are part of their own condition, the result of their own disability.

In relation to general violence, it is characteristic of asymmetrical relations, whether gendered or not and is, at first, instituted as symbolic violence, defined

by the power relations that are formed between individuals (and/or institutions), which are situated in power systems/structures that become instruments to help ensure that one class dominates another²³⁽¹³⁾.

When complicity is denied by the dominated, in a submissive relationship, symbolic violence gives way to other forms of violence.

When it comes to gender relations, it manifests as physical, psychological, sexual, moral, patrimonial, obstetric violence, among others.

However, the situation of women with disabilities is still practically invisible in the existing norms, and also outdated as to the preventions and instruments capable of accommodating the victim. For Pasinato²⁴, the most serious problem lies in the fact that women with disabilities in Brazil still face a deficit in terms of social recognition of their right to justice. To a large extent, this gap is due to the fact that the concept itself and the precise characterization of people with disabilities are still under construction. The perspective is cruel, according to Prates²⁵⁽¹⁾, because “their voices are always silenced, nullified by the weight of the multiple oppressions they suffer”.

In addition, proper ‘soundness’ is lacking among women without disabilities themselves, by the culture of ‘selectivity’, even among equals.

In the wake of the international rights and commitments assumed by our country, Law n° 13.146²⁶ was enacted, of July 6, 2015, which instituted the Brazilian Inclusion of People with Disabilities Act, also known as the Disability Statute, following the International Convention on the Rights of Persons with Disabilities. The Statute considers women with disabilities to be especially vulnerable, and obliges the SUS to develop actions aimed at preventing disabilities from preventable causes through women’s nutrition, and ensures health services including the same care for transgender women with physical disabilities.

The UN monitors Brazil’s compliance with the International Convention, and the report emphasizes that there is no accessible care for deaf and disabled women and that there is no strategy to ensure the empowerment of women with disabilities. It recommends consulting women with disabilities and their representative organizations for full compliance, recalling the motto of persons with disabilities: ‘Nothing about us, without us’.

From the socio-legal perspective, women

with disabilities, victimized by gender-based violence, live in a situation that is invisible. In LMP, it is only mentioned in relation to the aggravation of the penalty imputed to the aggressor; and in the crime of femicide, only as a cause of increased punishment and classification of the crime as heinous.

The lack of jurisprudence and reaffirmed judicial decisions on the subject characterize, strongly, the invisibility. Only one final decision of the 6th Special Domestic and Family Violence Against Women Court was found – which, subsequently, gave rise to an appeal in the Eighth Criminal Chamber, Appeal n° 0018240-96.2014.8.19.0210²⁷⁽²³⁾ and, that, nevertheless, exemplified the phenomenon of blaming the victim, not the oppressor, as the assaulted person stated “that the injuries presented were caused by falling from the wheelchair”.

The trivialization of violence and the blaming of women create a sense of impunity, and even crime is acceptable to society, which understands violence as a ‘provocation of the victim’, which ‘has not fulfilled its social role’, exposing itself to risk. Changing the culture of rape and violence, therefore, are fundamental to addressing these issues; having to, constantly exercise the counterculture of gender violence and the empowerment of the human person, emphasizing, above all, the importance of affirmative actions, true inclusion and accessibility, especially the attitudinal one.

In the field of health, the very way in which the biomedical paradigm casts its eye on people with disabilities already conditions an exclusionary perspective. Considering the notorious influence that biomedical discourse exerts, it is easy to understand this view of people with disabilities, based on the perspective of exclusion. In this sense, there is a significant absence of mention of people with disabilities, even in documents focused on special attention to gender, such as the implementation of health care for sexual violence against women in two Brazilian capitals, according to Cavalcanti et al.²⁸.

A clear example of the consequences of this approach to the biomedical model is the reality of obstetric violence against women with disabilities, as reported in the study by Terra and Matos²⁹⁽¹⁷⁾, which highlights “how the medical model of disability contributed to the adoption, by civil coding of 1916 and 2002, of an abstract model of disability”, and that this model denied “the exercise of a portion of autonomy in relation to acts that would be fully capable of exercising freely, producing an exclusionary regime”.

Another factor that contributes to the violation of rights of these women in health systems is the unpreparedness of professionals to perform their work. According to Sasaki¹, adequate attention is not paid to the sexuality of women with disabilities, victims of violence who do not even have adequate coverage of relief and treatment procedures, especially those that prevent communicable diseases, such as HIV (Human Immunodeficiency Virus).

In sum, although sexual violence and other offenses are serious public health problems, even so established by the World Health Organization and duly regulated in Brazil, such as Law n° 10.778/2003³⁰ (established compulsory notification of cases of violence against women), the vulnerability of women with disabilities, victims, still remains accentuated by the lack or incipience of adequate care. The challenges are demanding concrete changes for the realization of their citizenship.

Paths – visibility, accessibility and inclusive presence

Faced with the culture of gender violence and the exclusion of people with disabilities, two ways of transforming mentalities and cultures stand out: educating and informing. One of the ways to go is that of educational equity (acceptance of diversity), proposed in the Lisbon Declaration³¹, to change the

view of new generations about diversity as agents of this renewal.

Due to this bias, Silva and Nembri³²⁽⁵³⁾ analyze this transformation in the context of education for people with deafness, as is the case of the author himself, who states:

[...] by the approach, philosophy, method used in some centers of reference and excellence in deaf education in Brazil, the deaf naturally acquires sign language, says what he thinks in his dominant language without being admonished by this and then learns the language of most of their society.

Also in this perspective, Maio and Gurgel address³³ that the actions should be combined with proposals to broaden denunciation channels with coping plans at the various state levels and strengthening of rights councils, allocating funds and building integrated protection and support centers.

In addition to adequate data collection, other social agents play a relevant role in disseminating information, such as the press, which,

[...] has a strategic role in the formation of opinion and in the pressure for public policies and can contribute to broaden, contextualize and deepen the debate on the most extreme form of gender violence: femicide³⁴.

In addition, civil organizations, unions, associations, such as Citizenship Space and its Partners for Inclusion, that promote events and launch publications such as the booklet ‘Inclusion is Attitude! What’s yours?’, which, in a simple and illustrative way, addresses accessibility from the point of view of including people with disabilities in the labor market.

An essential aspect for guaranteeing the rights of women with disabilities is the accessibility to complain and to request care, which needs to be broadly expanded, as indicated by Sasaki¹.

The role of the judiciary is to ensure accessibility, primarily attitudinal accessibility, a dimension that will encourage the emergence of other dimensions – architectural, communicational, methodological, instrumental and programmatic, since, if accessibility is (or has been) designed under the principles of universal design, it will benefit all people, whether or not they have any kind of Sasaki¹ disability, certain that we are, all, potentially, people with disabilities.

This line of action, if put into practice, could lead to the existence of a compromised socio-legal system, which will help the Country to reach the goals proposed in the international diploma “Transforming Our World: the United Nations’ 2030 Agenda for Sustainable Development”³⁵ (very although there is not a single line in the Agenda that addresses women with disabilities in the goals and objectives of gender equality in chapter 5).

Final considerations

As already noted at the beginning of this text, there is greater socio-legal invisibility of forms of sexual violence and other offenses against women with disabilities. The voices must rise to denounce this invisibility and claim attitudinal accessibility, with inclusion.

The revision of concepts such as disability, transposing the question of a traditional biomedical model to the social model, allows us to understand the disabled person in a new perspective, no longer as an incapable, alienated or dysfunctional, but as another element on the whole of a plural society.

Such paths transcend the simple enforcement of laws and punish encumbrances, as they imply contributing to the care networks to attend all social actors involved, welcoming victims, with more and better public policies.

Considering that there are ethical gaps that prevent the full exercise of citizenship of women with disabilities, especially when they are victims of violence, and, because the

author is a professional of the legal field for, at least three decades, having experienced multiple visions on the Justice System, some suggestions are urgent.

The existing legislation should be improved, as well as the elaboration of other standards that may support those that do not have the characteristics of effectiveness and self-application. Every judicial and social system, whether in the police, the Public Prosecution’s Office, other bodies of attention and repression of violence, social assistance and public health bodies, and, especially, the Judicial Branch, must implement self-education measures, change their protocols for their inclusion in their projects, whether preventive or repressive. By creating, furthermore, priorities in care, which should be fully accessible to these hypervulnerable women.

For full visibility and greater attention to the subject, it is necessary that procedures and processes are categorized and cataloged; that accessible care is ensured, through trained agents, as interpreters of libras for hearing-impaired victims; that there is referral of victims who need to be removed from the home for assisted housing and, for those who do not have sufficient resources, financial assistance is created, even on a transitional basis; in addition to public policies available to assist the routine of these women and their caregivers.

Visibility in academic papers, within the laws, in society and in public policy, is the beginning of the visibility of these women with disabilities, which was sought as objective with this article, in order to present an initial analysis of what has been happening in Brazil with a segment in society rarely mentioned in court decisions or in the dialogue between human rights and health.

Collaborators

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