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Abortion rights in cases of stealthing: reflections, challenges, and legal possibilities in Brazil

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Abstract *This article discusses the phenomenon of stealthing, which is characterized by the removal of the condom during sexual intercourse by the man without his partner's consent. Because of unprotected sexual intercourse, there is the possibility of an unplanned pregnancy. However, there is no classification of such an act in the Brazilian legal system as sexual violence or rape, which makes it impossible for the victim to seek a legal abortion. We discuss the case of a young woman who, at the age of 25, became pregnant because of stealthing. Given the status of her relationship with her partner, her age, her future life plans, her lack of desire for motherhood at that time, and the lack of judicial support, the young woman resorted to an illegal abortion. Her case inspires a reflection on condom removal without consent and the need for legal, social, and academic discussion about the phenomenon of stealthing. The aim of this study is to discuss issues and circumstances related to stealthing and provide insights into legal possibilities for resorting to a legal abortion in Brazil in cases of this kind of sexual violence.*

Key words *Stealthing, Legal Abortion, Sexual Violence, Youth*

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Introduction

Stealthing is the act of a man removing a condom during sexual intercourse without the woman's consent[1]. The topic has been discussed in social and print media in recent years[2]. To date, there is no translation of the term into Portuguese[3].

In Brazil, authors[4,5] acknowledge that this practice is strongly related to gender-based violence, as men are considered active perpetrators of the act, and women, victims. Condoms are known to prevent sexually transmitted infections (STIs), HIV, and pregnancy[6]. In this context, stealthing can result in an unplanned pregnancy, with significant personal and health implications[7,8].

Despite a recent increase in research on stealthing[9] in different countries, there are only two studies on the subject in Brazil. Authors[10] have sought to understand the prevalence of this practice among students, aged 18 to 25, at a public university in the state of São Paulo. Their descriptive study used a closed questionnaire and included 380 participants. Of the total, 40 women had already been victims of stealthing.

The first national survey on stealthing, based on an online questionnaire, was answered by 2,275 women who had been victims of this practice in Brazil[8]. Of these, 1,732 were victimized when they were between 16 and 29 years of age. Out of this group: nine women became pregnant, seven of whom were young women, and five of them resorted to illegal abortions. However, the limitations of studies on the topic in Brazil are clear, as one is a local study conducted only among an educated population, and the other has a selection bias that restricts participation to people with internet access and/or those who are literate. Therefore, the actual dimension of this phenomenon in the Brazilian context is far from being known or understood.

In February 2025, the newspaper, *Folha de São Paulo*, reported that the *Hospital da Mulher* (Women´s Hospital), one of the public reference services for legal abortion in the city of São Paulo, has not authorized abortions in cases of sexual violence by stealthing. The City Hall of São Paulo confirmed that it does not allow the procedure in these cases and claimed that the protocol for such occurrences is under discussion by the legislative and judicial branches in the country. Furthermore, it was mentioned that, in 2024, abortion was denied for at least two similar cases[11].

In legal terms, no legislation addresses stealthing in Brazil. However, Bill 965/2022 – ratified in September 2023 by the Constitution, Justice, and Citizenship Committee (CCJJ) – provides for the inclusion of the crime of stealthing in the Penal Code, with a penalty of up to four years in prison for those who commit it[12]. The bill does not provide for the possibility of terminating a pregnancy resulting from stealthing.

In Brazil, abortion is allowed in cases where the woman's life is at risk, in pregnancies resulting from rape, and, since 2012, in cases of fetal anencephaly[13,14]. In this context, the criminalization of abortion in the country becomes the critical point in the connection between sexual violence, pregnancy resulting from stealthing, and the possibility of terminating the pregnancy. Unprotected by law, women are forced to turn to clandestine procedures, which increase the health risks associated with the procedure[15] and leave women vulnerable when trying to have an abortion[16,17].

In this scenario, the debate around youth, sexual violence, and pregnancy/abortion becomes paramount, given that younger women are more likely to be victims of sexual violence[18]. In Brazil, 7.1% of cases of sexual violence reported by young women resulted in pregnancy[19].

The discussion on stealthing and termination of pregnancy is emerging in academic and legal literature. This debate demonstrates the social importance of the issue, given the invisibility of the topic in the Brazilian context, as the arguments for legal abortion are interpreted restrictively and discussions in the legal sphere are polarized[20].

This article focuses on unequal power relations between men and women that reveals important issues in negotiating condom use[21,22]. This debate involves different areas of study, such as social and human sciences, law, and health. Expressly including cases of stealthing among legal abortion scenarios is a necessary step towards addressing situations of unwanted pregnancies resulting from this form of sexual violence, avoiding the denial of access to legal abortion services by institutions and professionals. In this fashion, we seek to discuss the need to criminalize stealthing in Brazil and the legal feasibility of access to legal abortion in these circumstances.

Demonstrating this, we present the case of a 25-year-old woman who was a victim of stealthing and became pregnant. After confirming her pregnancy and being unable to obtain a legal abortion, she resorted to an illegal abortion. Thus, we discuss possible criminal characterizations, analyzing whether the practice can be classified as rape and/or sexual violence, and we

point out some possibilities for access to legal abortion in Brazil in cases of stealthing.

Method

The study was carried out in two stages. An online questionnaire, administered between August 2022 and February 2023, aimed at women from all regions of the country who had experienced stealthing, was widely shared on social media. Additionally, participants were asked to forward the survey to other eligible women. All participants agreed to the Free and Informed Consent Form approved by the University of Porto Ethics Committee. The study group consisted of 2,275 women, aged 18 to 61 years, living in urban areas of Brazil, who had been victims of stealthing[8].

At the end of the questionnaire, respondents were asked if they would participate in an interview for the project's second stage. If they answered positively, they were asked to leave their respective emails or personal telephone numbers for later contact.

Ten women who had experienced stealthing and who had responded to the first-stage online questionnaire were contacted and agreed to participate in the qualitative interview. The second stage included women from all regions of the country, and the interviews were conducted between September 2023 and January 2024[23]. The research was approved by the Research Ethics Committee of the Fiocruz Fernandes Figueira Institute. The data were categorized based on a thematic analysis[24].

The case of Daniela (fictitious name) was particularly striking. At the interview, she was 33 years old, self-identified as brown, Catholic, and heterosexual. She lived in Manaus, had a postgraduate degree, and earned about five minimum wages. She became pregnant at the age of 25 after being the victim of stealthing. After this unplanned pregnancy, she resorted to an illegal abortion. Below, we present the interviewee's report.

Results

The narrative of the stealthing experience

When asked how the stealthing happened, Daniela said: "*I was 25. I met him through Tinder, he was 30. We 'matched,' he was an interesting person. He was a student and had a Master's degree. I saw him as a successful and serious guy. We went to a bar, and we had great chemistry. After a few hours, he invited me to his house, and I did. He opened a bottle of wine, talked, and soon kissed. And everything was fine. Then I asked if he had a condom, and he said he did and picked one up without any problem. It was pretty clear that at that moment we were going to use a condom, you know? He put on the condom. I'm sure he put it on because I saw it!*"

She continued: "*At the very end, I realized he ejaculated. It was only when he picked up the condom that I realized he was not wearing it. I was left with a puzzled look on my face. I understood absolutely nothing! I only managed to ask him, in a very shaky voice, after about two minutes: 'Did you take off the condom and cum inside?' With some nerve, all he could answer was 'yes' and that he thought I had noticed. And lay down on the bed! He didn't care about anything! I went home in shock! I really couldn't understand what had just happened […]. It's important to say that I only took the morning-after pill on the third day. I spent the next day talking to him, talking to my friends, and thinking of what I could do. Then I only took the pill afterwards. I know I did wrong, but I couldn't think straight the next day.*"

Daniela continued: "*After a few weeks, my period was late. I had a blood test, and it was positive for pregnancy. I got pregnant at 25 by a stranger, and he had blocked me on social media. I found myself alone and pregnant. I had always wanted to be a mother, but I never imagined it would be under these circumstances. At no point did I consider having this child.*"

"*In the midst of this, I went to a women's protection police station, which is supposedly specialized in crimes against women. I was being a bit naive at the time, but I thought that maybe I could go to court and they would understand my story, and I could get a legal abortion. I explained what had happened to me, and that later I found out I was pregnant. The guy looked at me as if I were crazy. He said that since it wasn't a marital relationship, that I had consensual sex, and I had no proof, there was nothing he could do. The best they could do was file a police report. I felt I had no shelter to turn to. I felt foolish about being there. And I had to decide what to do about the pregnancy. And I had to decide quickly because I was six weeks pregnant.*"

After the experience of going to the police station, Daniela said: "*The next day I spoke to a friend who was a doctor and told her I was desperate to have an abortion. She gave me the contact details of a guy who sold Cytotec. She said I could trust him and that I would not be arrested. We*

are capable of anything when we are desperate! I talked to the guy, told him I was six weeks pregnant, and needed the pills. He said he would charge 830 reais for four pills. And I had to pay cash; he wouldn't accept transfers. We agreed to meet at a gas station. He rode a motorcycle and kept his helmet on. He handed me an envelope. Terrified, I took the envelope and handed him the money. He counted the money and left."

She explained how the abortion came about after she arrived home: "*I told this friend of mine that I had no idea what I needed to do. So she sent me a booklet, which was like a WHO protocol, if I'm not mistaken, for having a safe abortion with misoprostol. I remember putting two pills under my tongue and putting two inside my vagina. I repeated it after a while and repeated it once more. Then I started to feel a lot of pain. I was really writhing in pain! My belly button felt like it was going to implode, and then I had cramps like I had never felt before. I was in a lot of pain and felt like vomiting. I remember having to change the pads practically every 20 minutes. In the middle of the night, I woke up with a huge urge to pee, so I ran to the bathroom. When I pulled down my panties and pad, several globs of blood fell to the floor. It was a horrible scene to see! Inside one of these globs, I saw half a pill. I was desperate. I put the pill back in and took some sleep medication. Based on the amount of blood, I really thought the abortion had been complete*."

To conclude, Daniela said: "*You feel a little scared by everything you went through, but it's also a huge relief. It's a relief to have done all that practically alone, without support from a partner or even the State, which fails us repeatedly. But I was relieved because I wouldn't be a mother under those conditions. I took the test later, and it was negative*." Regarding possible regrets about having had an abortion, she was quite emphatic: "*No regrets! And that's it, even though I want to be a mother, I always have. At no point did I consider having this child. I was in no condition at the time. I don't know how I got through that without falling apart!*".

Discussion

Based on her narrative, three topics are necessary for discussion: 1) Stealthing as an expression of sexual violence; 2) Institutional violence in police station services; 3) Vulnerabilities of illegal and unsafe abortion. Finally, we discuss the need to classify stealthing in the Penal Code so that women have the right to legal and safe abortion.

Stealthing as an expression of sexual violence

In this article, we defend and argue that stealthing, due to the removal of the condom without the consent of one of the parties, should be classified as sexual violence. According to the World Health Organization (WHO)[25], sexual violence is:

[…] any sexual act, attempted sexual act, or unwanted sexual advances; or actions to traffic or otherwise exploit a person's sexuality through coercion by another person, regardless of their relationship to the victim, in any setting, including the home and the workplace.

In this sense, consent must be considered a crucial element for the effective exercise of sexual freedom and autonomy, which is essential to guaranteeing healthy, satisfactory, and violence-free sexual relationships[26]. How, where, and with whom to have sex are individual decisions that must be respected. It is assumed that consent and violence are mutually exclusive by definition and, further, that consent must be an autonomous act, regardless of gender[27,28]. Therefore, anyone who defrauds consent manipulates trust at the time of sexual intercourse.

It is necessary to understand the need to identify and name this phenomenon as sexual violence, both by victims and by health professionals, and through the review of the legal system[3]. Consent is an indispensable element in sexual autonomy, and essential in the fight for women's rights[29]. Our starting point is the fact that the sexual violence of the act occurs due to the victim's lack of consent and the impossibility of using the contraceptive method of their choice due to coercion.

Service at the police station: institutional violence

Daniela went to the police station to be heard and have her sexual and reproductive rights assured. In addition to the lack of classification for the act of stealthing and the lack of awareness of the term among professionals, the young woman's demand is rendered invisible. Her words are discredited, being challenged about the type of relationship she had with her partner, the consent to sexual intercourse, and the fact that she had no "proof" that the condom was removed. Daniela is constantly asked if she is an "actual victim" of sexual violence[30].

Institutional violence is described as violence perpetrated by public bodies and agents who are supposed to welcome, care for, and protect

victims[31]. It can manifest itself in the forms of neglect; verbal violence, rude treatment, reprimands, threats; physical violence, including failure to relieve pain; and sexual abuse[32], causing physical and psychological consequences for users[33,34].

This is a public health challenge. Institutional violence demonstrates that gender inequality in society manifests itself in the formal structures of the State and in the criminal justice system, culminating in the blaming or discrediting of female victims of sexual violence[35,36]. It is also a system of selective and unequal social control for women, which exerts its power and impacts their lives, resulting from patriarchal social relations reflected in the stance of agents in health and legal institutions, which reveal other forms of visible violence in the field of sexual morality[37].

Vulnerability of illegal abortion

Daniela had an illegal abortion due to the State's lack of response to her pregnancy resulting from stealthing. In general, research shows that abortion itineraries differ based on the sociocultural and economic setting, age at the time of abortion, and the presence of a social support network[38-40]. The possibility of abortion thus appears as an alternative, regardless of the social group to which women belong. Elements of the context of the sexual relationship are relevant, since young women who reported an abortion were often in relationships that were not yet consolidated[40], as is the case with the interviewee.

Research shows how the practice of abortion can be related to the type of relationship a woman has with her romantic and/or sexual partner[17,40,45]. Although she wanted to be a mother, Daniela never considered motherhood as a result of sexual violence, demonstrating that abortion is contingent and the status of the relationship with the partner has a significant influence on the decision to terminate the pregnancy[46,47].

Data shows that around 25 million unsafe abortions occur every year, with regions where it is a crime being the most affected. This is the case in most Latin American countries[41], where 62 women die for every 100,000 abortions performed under risky conditions. The number is more than double the fatalities recorded in developed countries. Furthermore, women who undergo unsafe abortions in Latin America represent 20% of the worldwide total, with a mortality rate of 12%[42].

In this scenario, it is clear that abortion is a public health problem that remains unsolved due to its criminalization in most Latin American countries, as is the case in Brazil[43,44]. When not supported by medical or hospital care, nor by the State, women put their health at risk with poorly qualified professionals, generating high financial and social costs, especially for the poorest, promoting more social inequalities, and generating costs for the health system when they are treated[16,17].

Daniela also turned to a friend who was a doctor for more information about a possible abortion. Abortion itineraries generally involve the mobilization of the partner, family, friends, NGOs, and feminist support groups. There is also the engagement of healthcare professionals and drug suppliers who operate clandestinely[48]. Women usually occupy a prominent place in the support system. In the narratives, friends are often cited as a crucial element, for their emotional support, trust, or company at the time of having an abortion or seeking health services[49,50].

The young woman indicates how the internet became a support element in this itinerary. On the recommendation of her friend, she accessed an online WHO booklet on abortion with misoprostol. The mediation of the internet for this exchange of reliable information and support demonstrates that information and communication technologies (ICT) help to expand a possible network of solidarity and mobilization of resources online[51]. The relationship between the internet and abortion itineraries becomes an important form of care, revealing the heterogeneity of formal and informal information in a complex web of networks[52], and a protection network of female solidarity that includes the transmission of knowledge about more or less safe practices and methods[16,17,49].

Another critical point concerns abortion using the medication misoprostol (Cytotec, sold by the Searle laboratory). Its dissemination from the 1990s onwards constitutes an important change in the scenario of abortion methods, to the detriment of the use of teas, poisons, caustic substances, injections, and the recurrence of abortionists and the use of probes[53,54]. However, its sale is prohibited in Brazil, which leads many women to use misoprostol in a variety of ways and complete their abortions in hospitals[55]. Furthermore, abortion brings women closer to trafficking[56], making them hostages not only to adulterated products, but also to the illegal trade of the medicine.

The narrative highlights data already presented in various studies on different abortion

itineraries in Brazil[16,17,39,40,57], proving that one of the problems related to abortion, which emerges as a public health issue, is the way it is performed. In most cases, abortion is performed in an unsafe manner due to its lack of legal status, causing health complications, especially for young Black women with low levels of education.

The need to classify stealthing in the Penal Code: access to legal and safe abortion

Some countries have specific laws regarding stealthing. Canada, New Zealand, Germany, and the United Kingdom have recently ruled that the practice is akin to sabotage, based on the understanding that the choice of contraception is a crucial factor in consent to sexual relations, equating the sexual act with violence. The Singapore Parliamentary Justice has declared that stealthing is a sexual practice described as "deceptive." To date, California is the only state in the United States to have an anti-stealthing law[58]. Switzerland was the first country to make a court decision equating stealthing with rape[59].

In the Brazilian context, although there is no specific law on stealthing, the act can be considered as a crime provided for in article 215 of the Penal Code, of sexual violation through fraud: "Having sexual intercourse or practicing another lewd act with someone, through fraud or other means that prevents or hinders the free expression of the victim's will." The penalty for rape by fraud is two to six years in prison[13].

We also mention the crime provided for in Article 213, described as: "Forcing someone, through violence or serious threat, to have sexual intercourse or to practice or allow another lewd act to be practiced with them." This article could be applied if the woman notices the condom being removed and the man uses violence, coercion, or threats to continue the sexual relationship, classifying the act as rape[13].

The Maria da Penha Law (Law No. 11.340/06) condemns the practice of refusing to use condoms in article 7, paragraph III. The law provides for restrictions on the use of contraceptive methods as a form of sexual violence, and stealthing can be classified as this type of conduct. The law considers:

Sexual violence, understood as any conduct that forces a woman to witness, maintain, or participate in unwanted sexual relations, by means of intimidation, threat, coercion, or use of force; that induces her to commercialize or use, in any way, her sexuality; that prevents her from using any contraceptive method or that forces her into marriage, pregnancy, abortion, or prostitution, through coercion, blackmail, bribery, or manipulation; or that limits or nullifies the exercise of her sexual and reproductive rights[60].

Therefore, stealthing can be provided for in this law from the moment the condom is removed without the woman's consent, preventing the victim from negotiating and using the contraceptive method of their choice.

Sections I and II of Article 128 of the Penal Code provide for the cases in which abortion will be considered legal: necessary abortion, which are cases in which the pregnant woman's life may not be saved any other way, or abortion in the case of pregnancy resulting from rape[13]. Therefore, the legislation is clear and objective regarding the circumstances in which intervention will be lawful. In this sense, the analysis is opened to explain what stealthing would be in practice.

Given that the characterization of the crime of rape requires the use of violence or serious threat, the act of stealthing must contain a sexual violence nature to be able to fit the hypothesis provided for in article 128, paragraph II, of the Penal Code. However, the authors mention that the practice of violence resulting from the removal of the condom without consent already constitutes sexual violence and, therefore, grounds for legal abortion.

Stealthing can be interpreted by legal analogy with crimes already existing in the Penal Code. Legal analogy seeks to apply an existing rule to an unforeseen case, based on the similarity between the situations and the identity of legal reason. Thus, it is possible to have access to legal abortion in cases of stealthing if the pregnancy results from conduct that involves violence or serious threats, as this could be characterized as rape. The legal interpretation must be favorable to the victim of stealthing, and their word must be enough to guarantee access to legal abortion.

We finish with the argument for the urgent need to classify stealthing in the Penal Code. Although the act is not yet classified, in itself, as a typical crime of rape, it would be legally viable when there is consent and the desire of the woman to have a legal abortion, as was the case with Daniela. This possibility reinforces the dignity of women as subjects of rights, capable of fully exercising their sexual and reproductive freedom.

Final considerations

This work has limitations. Although we consider the empirical data from the interview to be satisfactory from a sociological point of view, this specific case study demonstrates the impossibility of considering it representative of female victims who became pregnant due to stealthing in Brazil, making it impossible to find significant relationships and generalizations from a single interview. We must also mention that the interviewee was white, cisgender, highly educated, earned more than five minimum wages, and had a minimal support network to support her in her decision (the internet, a friend who was a doctor, and financial means to purchase the necessary medication).

We were able to demonstrate the need for further research on stealthing and its impacts on sexual and reproductive health, considering Black and brown women, trans people, women with low levels of education, women of different ages, working-class women, and women living in rural areas, for example. Although increasingly discussed in the international media, stealthing requires greater conceptual and theoretical attention, especially in the field of gender and sexual violence. Stealthing challenges us to think about the gray areas of consent[61] and to think of it as gender-based violence in the contemporary scenario that affects women's sexual integrity[62].

While producing this article, we faced a scarcity of academic works and case law. The absence of a legal norm in the Brazilian legal system that defines stealthing, and the limited number of Brazilian studies and laws related to the subject, given that the majority are international, contribute to the invisibility of the phenomenon. Law enforcement agencies, such as the Legislative and Judicial branches, are urged to analyze stealthing as conduct that physically and psychologically harms the victim and may result in a possible unplanned pregnancy. Therefore, it is necessary to classify the practice specifically in the Brazilian legal system, thus providing greater legal security for victims.

As can be seen, the State did not offer efficient support to the interviewee. On the contrary, the State reveals itself through its disregard for the violence suffered by the interviewee and through its legal and legislative immobility, handling her case in precarious conditions, pushing the young woman into hiding[63]. Despite this gap, we emphasize that Brazilian legislation has already determined what sexual violence is. Therefore, current legislation may be sufficient to characterize the practice of stealthing, if not as a crime of rape, as sexual violence as serious as rape itself, as established, for example, by the Maria da Penha Law.

This article encourages investigations into the perspective of stealthing as a form of sexual violence, as well as into the possibility of applying an analogy to the laws that authorize legal abortion in Brazil. However, the Legislature needs to identify the need for immediate penal reform, with the development of criminal types of new violence, especially stealthing, in a serious manner, and supported by other limits of legal bases of sexual violence that already exist in the Brazilian Penal Code to guarantee access to legal abortion for victims.

Collaborations

W Ferrari was responsible for the literature review, collection, organization, and analysis of the empirical research material, and final revision of the article. M Nascimento was responsible for the analysis of the empirical research material and joint organization of the data discussion and final revision of the article. B Galli was responsible for joint organization of the data discussion and analysis and final revision of the article.

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Data availability statement

The data sources adopted in the research are indicated in the article's body.

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