



Human Rights and Incarcerated Women: Between the Norms of the Law and a Reality to Endure*

Direitos Humanos e mulheres encarceradas: entre as normas da lei e uma realidade para suportar

Derechos Humanos y mujeres encarceladas: entre las normas de la ley y una realidad que soportar

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Abstract

This article problematizes the situation of incarcerated women, drawing attention to the multiple violations of their basic rights within the penitentiary system, including the disregard of norms specifically directed at the female gender in prison. The purpose of this article is to highlight the difficulties faced by women in incarceration, emphasizing social markers such as economic-patriarchal dependency, skin color, age, level of education, and motherhood in prison. In the current context of expanding female incarceration, women face a reality even harsher and more cruel than that of incarcerated men, since, from the beginning of the construction of modern prisons, the prison system was designed to house male inmates, without considering the specificities of the female body and its needs. The article identifies certain variables that violate rights and, based on them, calls attention to the need for decarcerating public policies in line with the promotion of Human Rights.

Keywords: incarcerated women; prisons; human rights.

* Este artigo é uma versão adaptada da dissertação de mestrado - Do Aprisionamento às Possibilidades de Emancipação: Trajetórias Femininas e a Luta por Direitos, defendida em outubro de 2024 junto ao Programa de Pós-Graduação (mestrado e doutorado) em Direitos Humanos e Políticas Públicas da PUCPR. Texto traduzido por Inteligência Artificial.

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Resumo

O artigo problematiza a situação das mulheres encarceradas, chamando a atenção para as múltiplas violações de seus direitos básicos no sistema penitenciário, em detrimento, inclusive, às normas direcionadas ao gênero feminino no cárcere. O propósito do artigo é apontar as dificuldades enfrentadas no encarceramento feminino, ressaltando marcadores sociais como dependência econômico-patriarcal, cor da pele, idade, escolaridade e mães encarceradas. No atual contexto de expansão do encarceramento feminino, as mulheres enfrentam uma realidade ainda mais dura e cruel que a dos homens encarcerados, uma vez que, desde o início de construção das prisões modernas, o sistema prisional foi idealizado para abrigar os encarcerados do gênero masculino, não se atentando às peculiaridades que envolvem o corpo e as necessidades femininas. O artigo identifica algumas variáveis que violam direitos e, a partir delas, chama a atenção para a necessidade de políticas públicas desencarceradoras, condizentes com a promoção dos Direitos Humanos.

Palavras-chave: mulheres encarceradas; prisões; direitos humanos.

Resumen

El artículo problematiza la situación de las mujeres encarceladas, llamando la atención sobre las múltiples violaciones de sus derechos básicos en el sistema penitenciario, en detrimento incluso de las normas dirigidas al género femenino en el encierro. El propósito del artículo es señalar las dificultades enfrentadas en el encarcelamiento femenino, resaltando marcadores sociales como la dependencia económico-patriarcal, el color de piel, la edad, el nivel educativo y la maternidad en prisión. En el actual contexto de expansión del encarcelamiento femenino, las mujeres enfrentan una realidad aún más dura y cruel que la de los hombres encarcelados, ya que, desde los inicios de la construcción de las prisiones modernas, el sistema penitenciario fue idealizado para albergar a personas del género masculino, sin considerar las peculiaridades que implican el cuerpo y las necesidades femeninas. El artículo identifica algunas variables que violan derechos y, a partir de ellas, llama la atención sobre la necesidad de políticas públicas desencarceladoras, coherentes con la promoción de los Derechos Humanos.

Palabras clave: mujeres encarceladas; prisiones; derechos humanos.

1 Introduction

In the context of prisons, it is possible to affirm that, from the point of view of gender, the violations of the rights of incarcerated women are more intense and profound, since they are made invisible by the State, persisting with public policies and conditions that do not consider the particularities and specificities of the female gender. This includes everything from the lack of adequate food in quantity and quality, overcrowding of cells, absence of adequate infrastructure, scarcity of basic hygiene and health products, to abandonment and loneliness, among other factors.

Regarding the female population involved in the practice of crime and incarcerated, data provided by the Department of Penal Execution (DEPEN) between 2000 and 2023 indicate a significant increase in the rate of women in situations of deprivation of liberty, from 5.6 thousand women in 2000 to more than 27 thousand in 2023. These numbers represent, in the absolute majority, crimes of drug trafficking in small quantities, called ant trafficking, carried out by women who visit their partners, husbands, children, among others men of his family and

take with them small amounts of drugs.

The absence and/or inefficiency of public policies in relation to women prisoners makes it urgent to carry out studies and empirical research in order to demonstrate the social and theoretical relevance of the situations and specificities that need to be taken into account when, for various reasons, women are convicted and imprisoned in Brazil. In the daily life of prisons, many women incarcerated and in the custody of the penal state are faced with basic deficiencies/violations of their rights, such as the lack of hygiene products.

Social and academic projects can contribute to the incidence of public policies for the defense and promotion of the human rights of incarcerated women, such as, for example, the promotion of work activities that occupy idle time and result in the manufacture of disposable sanitary pads, an indispensable product for the female condition. On the theoretical level and based on the survey of available official data, the article seeks to understand the factors that cause the imprisonment of women, emphasizing emotional dependence and financial dependence in the patriarchal context, as well as to understand the violations of rights in the daily prison life, considering the social markers, such as color, education and aspects inherent to the female gender.

To understand the moral view and factors that cause the imprisonment of women, prioritizing the analysis of two situations that condition the entry of women into the practice of crimes: i) emotional dependence linked to gender stigma in the context of patriarchal societies and; ii) the occurrence of crimes committed by women associated with financial dependence. Regarding the method of exposition of the article, the first section analyzes the performance of the official apparatuses of repression and control directed at incarcerated women.

The second section addresses the situation of incarcerated women and draws attention to the dehumanization related to petty drug trafficking. The third section describes a series of markers that violate human rights in the daily life of women's prisons. In the final considerations, the article emphasizes the importance of enforcing constitutional provisions related to women's rights in prisons, emphasizing the urgency of implementing alternative political-legal mechanisms to women's imprisonment.

2 Political-criminal apparatus of prison control over women considered outlaws in the context of patriarchy

According to Andrade (2011), the first women's prisons were located in convents and

received religious guidance from the nuns. The role associated with prison is to train women and return to society the ideal of good mothers and wives, capable of fulfilling their social role, reinforcing the need to reintegrate them into the function of good housewives, dedicated mothers, good wives, careful and correct professionals. Gurgel (2017) points out that the role of prisons, in this context, is to divert the paths of crime by learning the roles assigned to the feminine. Thus, "the moral reconstitution of the inmates was on the agenda and under the mission of the Catholic sisters" (Andrade, 2018, p. 156). According to a report from one of the inmates at the time:

The prison was run by the mothers, it was the time of the hard lock. The food was terrible and we were forced to do manual labor and did not receive a penny. The 5 a.m. mass was mandatory. We were forced to pray so much, that I think God didn't even hear so much prayer. Compared to that time, today this is a paradise (Lemgruber, 1999, p. 66).

The need for more places in prisons and the creation of a shelter for women considered criminals were discussions that were present. In Brazil, according to what Pedroso (1997, p. 134) wrote,

[...] in an order dated 1932, the then president of the penitentiary council of the Federal District, Cândido Mendes de Almeida, asked the Minister of Education and Public Health, Francisco Antunes Maciel Jr, to cede the Santa Maria farm in Jacarepaguá/RJ – previously intended for the installation of an agricultural penitentiary for women delinquents.

The political-legal debate of the time warned of the separation of the defendant, taking into account sex and age, and also the production of knowledge of specific categories for the purposes of discipline and control. The isolation of specific categories of prisoners aimed to obtain "a more improved knowledge about individuals and control over their bodies becomes more direct and elaborate" (Pedroso, 1997, p. 127).

Regarding women's prisons, in 1937 Brazil inaugurated the first prison exclusively for women in the city of Porto Alegre, called the Reformatory for Criminal Women and, later, the Women's Institute for Social Readaptation (Andrade, 2018).

The creation of prison institutions and their late division based on the gender marker was due to the need to separate men and women in order to apply different treatments and correctives to them. The Brazilian Penal Code (Brasil, 1940) established the first legislative guideline for the physical separation of men and women. The aforementioned CP determined, in Article 29, 2nd paragraph, that: "women serve their sentence in a special establishment, or, failing that, in an appropriate section of a penitentiary or common prison". Based on the determination of the Code in question, in 1942, the "Women's Prison" was inaugurated on the grounds of the State Penitentiary, under the care of the nuns of the Congregation

of the Good Shepherd d'Angers (Artur, 2009, p. 1).

During the 1940s, new women's penitentiaries were created in other regions of the country, such as the Women's Prison of São Paulo, through Decree-Law No. 12,116/41, and in the Federal District (1942), through Decree-Law No. 3,971/41, called the Prison of the Federal District.

It is known that, in the context of patriarchal societies, women were placed on the sidelines and subordinated to domestic chores. This patriarchal worldview manifests itself in the criminal justice system. In moral terms, Espinoza (2004, p. 17) writes, for men "the values to be awakened, with the penalty, were of legality and necessity of work, while the deviant women needed to recover their modesty with the imputed penalty".

In spite of recurrent situations of precariousness and violation of Human Rights that afflict the male incarcerated, the treatment granted to imprisoned women may be worse than the male gender.

Although criminal law has the primary objective of ensuring social security and order, its application is not always impartial and equitable, often perpetuating gender stereotypes and reinforcing social inequalities. Andrade (2011, p. 89) points out that "[...] With regard to women and their criminalization, we realize that criminal law not only helps to solve certain issues, but also gives rise to new discrimination and reinforces old ones." In the context of prisons, machismo impacts imprisoned women, denying their particularities and their condition as human beings. For Gurgel (2017), imprisoned women have their own demands and needs, aggravated by a history of family violence and specific conditions, such as motherhood, financial loss, emotional distress resulting from the rupture of affective ties and dependence on licit and illicit drugs.

Rampin (2011, p. 30)¹ reveals that:

The adoption of a masculine, absolute and unified paradigm when designing public policies for prisons, violates and violates the citizenship of women prisoners and contributes to the increase of a progressive and increasingly intensive process of their invisibility, to the point of denying them one of the most expensive goods to any person: dignity. It aggravates the fact that the way in which the penitentiary system is conceived and designed contributes to the increase of this type of violation, institutionalizing violence (in its various forms: physical, emotional, psychological, in short) as an intrinsic factor in its functioning.

The author's statements contribute to demonstrate that the criminal justice system related

¹ Talita Tatiana Dias Rampim, in her text "Women and the Penitentiary System".

to gender issues reinforces inequality and a series of vulnerabilities that afflict women. The social inequalities in prisons, evidenced throughout the process of formation of patriarchal societies, find, in the criminal justice system, a kind of crowning in the sense of leading the system, working on the basis of selectivity and punishment that falls, preferentially, on poor and vulnerable women, condemning them to the loss of their freedoms.

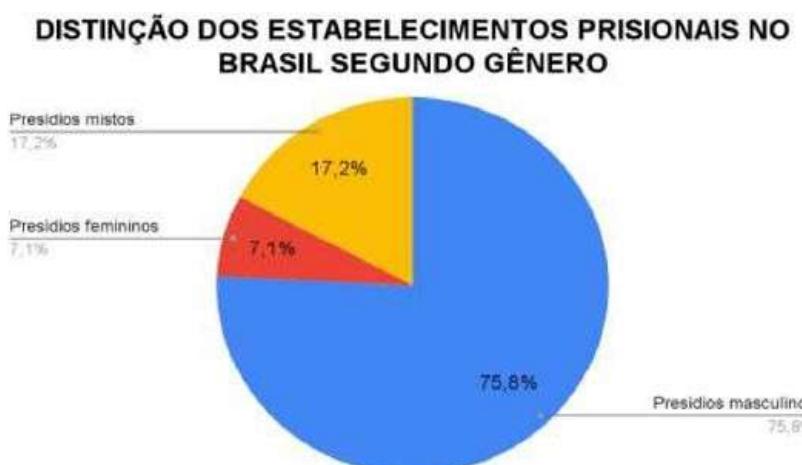
When observing the situation of incarcerated women in Brazil, information available from the Penitentiary Department (DEPEN) shows that only 7% of prisons in the Brazilian territory are intended for the detention of women (Brasil, 2007). According to information from DEPEN, most of the women's penal establishments are mixed, with wings and cells for women being adapted.

The inexistence and/or precariousness of treatment modalities aimed at the rehabilitation of prisoners, such as daycare centers or nurseries for their children, show situations of degradation of incarcerated women.

The penitentiary census produced by the Foundation for the Support of Prisoners – FUNAP found that the state of São Paulo houses more than 41% of incarcerated women in the entire country, however, 36% of women did not receive visits. Among those who received visitors, 47% received their family members only once a month. The situation of precariousness and denial of human rights becomes more explicit when it is observed that only 6 of the 73 inmates received frequent visits (Brasil, 2008).

The massive increase in the custody of women is very worrying and has been one of the concerns of the National Plan for Criminal and Penitentiary Policy.

Graph 1 – Division by gender of Prisons in Brazil



Source: Brazil, 2014.

Although women are a minority in the universe of crime, the rate of female incarceration grows vertiginously in the country. The graph above highlights the disproportion of prison units intended for the female gender compared to the male public.

Data provided by the Brazilian Forum on Public Security ([FBSP], 2018) show that the rate of imprisonment of women per 100 thousand inhabitants places Brazil in third place, behind only the United States and Thailand. With regard to the world's female population, Brazil is characterized by the paradox of making up 2.7% of the world's population and 5.2% of the incarcerated women on the planet.

In the daily life of prisons, Jocenir (2001) highlights the inhumane conditions and cruel treatment faced by inmates in Brazilian prisons, stating that, from the point of view of official institutions, the deprivation of liberty, that is, the removal of the convict from social life, does not seem to demonstrate greater suffering of the man who becomes part of the prison reality in the country. While public institutions admit the normality of the functioning of prisons, the author points out that police districts, public jails, among others, go beyond restricting the freedom of an individual and taking him out of circulation, since they subject him "to inhumane conditions in spaces identified as a simple deposit of human beings" (Jocenir, 2001, p. 17-18).

With regard to the degrading conditions of prisons, Mendes (2001) describes actions and attitudes of beatings and torture, lack of adequate food and leftovers from the production of enemies, aggressive looks, provocations and violence. When referring to the agents responsible for the administration and internal control of prisons, the author, who has already served time in the penitentiary system, reports in a tone of revolt that "those who arrested us, who kept us imprisoned, those who condemned us, our executioners (in their actions) were worse than us. The difference is that we were prisoners" (Mendes, 2001, p. 411-412).

Among the authors who deal with the selectivity of criminal justice, Wacquant (1999) argues that punitive law is marked by a deliberate selectivity, with a tendency of the criminal justice system to apply penalties unequally to different social groups, based on factors such as race, social class and gender. The historical-legislative and operational framework of prisons in Brazil allows us to affirm that the country's prison system was designed to incarcerate and discipline people with low education, poor and black people.

The survey released by the National Council of Justice (CNJ), in 2020, during the Covid-19 Pandemic, entitled "General Data on Arrest in Flagrante", revealed that 60.9% are black or brown people, while 38.5% are white people. In addition, 61.6% did not go beyond elementary school, 42.3% said they had children under 12 years of age, 38.8% declared to be unemployed

and, also, that 41.6% indicated that their income comes from informal activities. Regarding the gender of inmates, the highest proportion of men imprisoned in the country is related to the most serious type of crime committed by them, in relation to women who usually comment on less serious crimes (Brasil, 2021).

Wacquant's (1999) reflections signal how the right to punish, in the hands of the State, evidences multiple human rights violations. Under the monopoly of the State's power to punish and incarcerate, criminal law and its related institutions represent a powerful and selective institution of control, since, as a rule, poor and vulnerable individuals and social groups present themselves as preferential clientele of the punitive apparatus of the State's institutions of repression and control.

In situations of incarceration, Gurgel (2017, p. 139) comments that "the prison environment tends to reflect and reverberate a process of exclusion, pain, suffering and misery" that afflicts a considerable part of the poor and vulnerable classes, converting prison into a place and symbol of punishment in ongoing capitalist societies. In relation to contemporary Criminal Law, the deprivation of liberty sentence was guided by a paradoxical and contradictory scheme: At the same time that prisons emphasize the importance of respect for human rights, a significant part of society and its institutions legitimizes recurrent discourses and practices of increase the severity of the penalty, as a justification for confronting and combating crime and impunity (Gurgel, 2017).

With regard to the imprisonment of women, Buglione (2007) points out that the universe of female criminality has always been related to the so-called "gender crimes" circumscribed in the domestic sphere. Patriarchal societies give centrality to the traditional definition of family and link female criminality to problems such as abortion, infanticide, passionate homicides, exposure or abandonment of the newborn to hide self-dishonor, theft and those related to the crimes of the partners.

In the past, women's participation in robbery gangs was irrelevant. The female presence in the prison environment was restricted to thefts, passionate suddenness and one or another robbery. With the growth of cities and the economic development of recent decades, this picture has changed, because the family structure has become more dispersed and the benefits and rights that women have imposed on the patriarchal model of Brazilian society have not been distributed homogeneously across social classes (Varella, 2017).

This spectrum configured by ideological determinisms and ahistorical norms of behavior, which permeate the sociocultural reality, circumscribing women's lives in the private sphere, contrasts with the economic, social and political transformations that have redefined the

condition and role of women in contemporary societies.

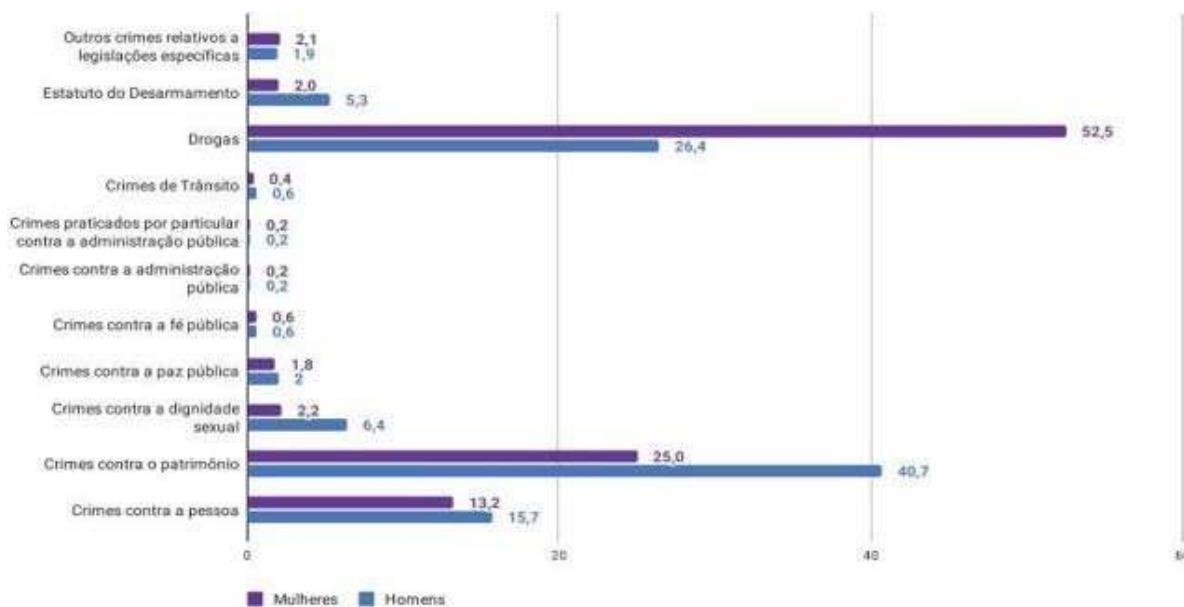
3 Expansion of female incarceration through the practice of ant trafficking as an expression of human rights violations

The increase in the custody of women is worrying and has been one of the concerns of the National Plan for Criminal and Penitentiary Policy. It is known that both genders are exposed to the same social factors, although the female condition is more vulnerable in terms of mistreatment, abandonment, sexual abuse, domestic violence, early pregnancy, among several other aggravating factors.

Information released by the Ministry of Women, through the Annual Socioeconomic Report of Women (RASEAM), shows that, in 2024, Brazil had 45,259 women imprisoned. These numbers place the country as the third largest female prison population in the world. According to data from the National Penal Information System (SISDEPEN), of the National Secretariat of Penal Policies (SENAPPEN), most women in prison in Brazil are black or brown. In 2022, they accounted for 66.9% of incarcerated women (Brasil, 2024).

Regarding the typification of the crimes committed, most of the women intercepted, accused and arrested, he is involved with drug crimes and types of crimes against property.

Graph 2 – Percentage distribution of the prison population by sex according to crimes committed



Source: Brazil (2024).

The information released by the Ministry of Women, represented in the graph pasted above, shows that 29.7 thousand of the women were imprisoned in a closed regime. According to the report

presented, most of the inmates are imprisoned for the crime of drug trafficking. In 2022, 52.5% of women were in prison for this crime, while 26.4% of men were for this reason (Brasil, 2024).

Incarcerated women suffer violations of rights for crimes considered minor, committed without the presence of violence or threats. Most of them are still first-time offenders and have good criminal records, requirements that justify a more lenient and beneficial criminal treatment. In the prisons where he is confined to the large prison mass, it is humanly impossible to abolish trafficking, since this, especially cocaine trafficking, is more profitable (Varella, 2017).

According to the author, the euphoria caused by cocaine is so intense that it imprints persistent memories on the networks of neurons involved in the sensations of pleasure. The intensity of the effect on the brain's reward centers makes the joy of playing with a child, meeting a friend, the company of a loved one, the small professional success, the taste for a job well done, the beauty of the landscape or a work of art insignificant. In the absence of cocaine, the world pales, daily life passes gray, life becomes a burden difficult to carry (Varella, 2017).

Regarding drugs, the author asserts, it is impossible to prevent the ant trafficking of visitors. Small quantities can be sewn to clothes, disguised inside bags with groceries, shoe heels, babies' diapers, cigarette packs, sanitary pads, canes and orthopedic devices of older ladies. How to search everything? (Varella, 2017). Many fall with drugs in the ordinance, article 33 of Law No. 11,343/2006.

The sentences usually reach four years, even if they are first-time offenders, they are caught trying to enter with small amounts at the request of a male relative, brother, cousin, husband, father. "Some already leave the entrance to jail, the machine discovers hidden herb or powder. The scene is sad, I avoid looking" (Diniz, 2015, p. 54). There are hundreds or thousands of bridges that introduce illicit drugs into the country's prisons. Not all, however, are professional traffickers, many do so for nobler reasons. They enter into crime on behalf of family members or prisoners who swear they are sentenced to death if they do not pay debts contracted with ruthless killers, blackmail.

This is the case of Mrs. Liomar, who visited her son thirteen years ago. The son was sworn to death for unpaid debt, the mother would be the savior. Either marijuana would enter or it would not save the child. An experienced visitor, Liomar believed that the marijuana protected by the natural cavities would be invisible to the black vest. From visitor, the grandmother is now an inhabitant (Diniz, 2015).

The woman is unable to deny the request since she is aware that, in that environment, as

recommended, the "drug becomes part, directly or indirectly, of the scheme of domination of the prisoners, and another torture of the body" (Pinto, 2008, p. 38). As a rule, the woman sympathizes with the suffering of the relative who often has the addiction or is coerced to pay some punishment with drugs, etc.

Surprised at the entrance, they are taken to the police station and, from there, to a prison. Many women do not return home that night or in the following days. They almost always leave the older children at home to take care of the little ones (Varella, 2017).

In view of this dramatic and inhumane context, several measures are proposed to reduce female incarceration, because, as Gurgel (2017) reveals, this is an urgent policy, mainly due to the impact that this segregation has on the family nucleus of each incarcerated woman. Strictly speaking, they are the ones who, in most homes in the peripheries, are responsible for the support and care of their minor children, who also end up suffering the same punishment as their mothers, being relegated to abandonment and misery.

The general coordinator of the Program for the Promotion of Alternative Penalties and Measures of the Ministry of Justice's DEPEN, Márcia de Alencar, at the 1st National Conference on Public Security, held between August 27 and 30, 2009 in Brasilia, comments that alternative criminal treatment is aimed at people who do not represent a risk to society. considering his degree of culpability, his antecedents, his social conduct and his personality. Alternative punishment does not expose the offender to the evils of the penitentiary system, since it does not distance the individual from society, does not exclude him from social life and from his family (Brasil, 2009a).

The alternative penalty aims, without rejecting the unlawful nature of the fact, to hinder, avoid, replace or restrict the application of the prison sentence or its execution, or even, at least, the reduction of the sentence. In other words, it aims to imprint political-legal measures of an educational and socially useful nature, imposed on the perpetrator of the criminal offense, instead of the deprivation of liberty (Pinto, 2008).

4 Some markers of violation of the human rights of incarcerated women

Among the types of violation of the Human Rights of incarcerated women, it is common to see their rights denied in relation to conjugal visits, access to health, maternity in prison, abandonment and mental health problems.

It is also important to highlight the even more degrading condition of incarcerated black women who, in addition to facing the same challenges as white women, also submit to hostilities and

humiliating treatment because of their color. The treatment given to black women follows the trend of penal treatment directed at the black population in general, being no different from that given to black women deprived of liberty.

In this sense, Judge Leonardo Bechara Stancioli reflects that

The black population does not find support as victims. His presence in the courts, in the police stations and in the courts, is often in the condition of the perpetrator of a crime and not the other way around. The recognition of the black population as a subject of rights is still far from effective access to justice (Stancioli, 2017, p. 11).

The violation of the right to conjugal visits is another of the markers that afflict the daily life of the inmates. There is an unequal response on the part of the system in relation to the treatment given to incarcerated people under gender bias. The National Council for Criminal and Penitentiary Policy (CNPCP) recommended to the State Penitentiary Departments, or similar bodies, that the right to conjugal visits be ensured to prisoners of both sexes.

This recommendation was made through Resolution No. 01, of March 30, 1999. However, incarcerated women only gained access to this right in 2002, almost twenty years after its implementation in male prisons (Oliveira; Santos, 2012).

Women's fundamental rights are restricted and, when it comes to the right to sexuality, it is ignored, resulting in the difficulty of maintaining their relationships outside the walls, which intensifies their feeling of loneliness. It is necessary to spend a specific treatment so that the specificities and particularities of women are respected, in order to achieve a minimum of equity.

Incarcerated women suffer various forms of discrimination regarding gender, including moral discrimination. This issue crosses prison since women are discriminated against by society in general.

In testimonies obtained by Varella (2017, p. 258), one of the inmates makes the following statement: "When they go to jail, we have to make intimate visits every weekend. If you abandon or date someone else, you need a lot of luck to stay alive. When we are the ones who are in prison."

It is worth mentioning that penitentiaries create several bureaucratic obstacles, such as the imposition of various rules of conduct and the need for extensive documentation, rules that are not required in male prisons. The maintenance of sexual relations is a right of women that must be safeguarded and facilitated so that the maintenance of the affective bond with husbands and wives is guaranteed.

The health of the female prison population is a relevant point to be discussed also in terms of

equal treatment given to men. Equal treatment is impossible when using the discourse of equality, where there is no need to talk about equality, when biological issues make fictitious equality impossible. There is only equal treatment when the differences inherent to gender are taken into account, which does not occur in the prison environment.

Varella, when dealing with the differences in the health problems faced by women and men in prison environments, states that:

The health problems were very different from those I had faced in the men's prisons. Instead of poorly healed wounds, scabies, boils, tuberculosis, mycoses and respiratory infections in men, they complained of headache, back pain, depression, panic attacks, gynecological conditions, acne, obesity, menstrual irregularities, high blood pressure, diabetes, suspected pregnancy (Varella, 2017, p. 12).

According to the author's professional and life experiences, in the context of prisons, the crowded waiting room ignores any possibility of professionals working in prisons listening to the problems of someone who says he suffers from "needles all over the body, thyroid problem, bronchitis, constipation, nausea, lack of appetite, kidney pain, high blood pressure, drooping bladder and nervous system" – complaints that were presented to me, exactly in that order, by a lady with long hair in the evangelical fashion, stuck on the border of Paraná (Varella, 2017, p. 12).

The author exposes more testimonies about the health problems of the inmates: Dona Sebastiana, imprisoned at the age of 68: "It's inhumane. Not only with me, who am too old to be cold, but with these young women, who take cold showers on those days, with colic (Varella, 2017, p. 21). "The comrades arrive here with Strong cramps, throbbing migraine, locked back crisis, and what do we have to give? Paracetamol. Do you solve it?", says one of the responsible parties (Varella, 2017, p. 79). As a doctor, the plaintiff prescribed an antimycotic cream to an inmate and recommended that she keep the region very dry. The inmate replied: "I can't, I only have a pair of panties. I wash, twist and wear again" (Varella, 2017, p. 90).

In his studies inside prisons, Diniz makes the following comment to describe the feeling of a doctor inside a women's penitentiary:

Dr. Paloma is amazed by the advance of warts, a merciless sign of syphilis. Before examining her, the way the hands gain intimacy on the body, unbathed, the doctor started a conversation. "Do you feel anything?" I feel pain in my belly, in my throat. Am I HIV-positive, aunt? [...] No, I thought, it would be too much for a single body – mental retardation, pregnancy, syphilis, AIDS, street (Diniz, 2015, p. 190).

Queiroz (2016) refers to the prisoner Gardenia who gave birth, returned to jail and had to get used to sleeping on a floor of dubious hygiene. Before long, his stitches became inflamed. They hurt so much that I couldn't walk properly. He even went to the hospital where he was

prescribed twenty injections of anti-inflammatory. They took her to take two and then they didn't take any more. There was no vehicle, there was no policeman, there was always an excuse. He concluded that it was ill will and there was no point in insisting.

Many pregnant inmates did not receive antenatal care. Most arrive pregnant in jail and some, at the end of their pregnancy, have never seen an obstetrician, because they were too poor and uninformed. As in the entire country there are only 39 health units and 288 beds for pregnant and breastfeeding women, 2 deprived of liberty, in most prisons and public jails, they are mixed with the prison population and, when the time comes for delivery, someone usually takes them to the hospital.

Many children have been born inside the prison because the car did not arrive in time, or because the police refused to take the pregnant woman to the hospital, since they probably did not believe – or did not care – that she was in labor pains. In some cases, says Heidi, another inmate, it happened that the prisoners themselves gave birth, or the prison nurse (Queiroz, 2016).

In the context of patriarchal societies, maternity in penitentiary appears as a marker of moral classification of incarcerated women. The premise of the duty of a mother is a criterion to differentiate and label the inmate who, for various reasons or options, has not yet had children. In this case, the perception of the collective consciousness predicts the condition of gay or infertility.

Table 1 – The 10 states with the highest number of pregnant women, breastfeeding women and dormitory cells for pregnant women.

The 10 States with the highest number of pregnant and breastfeeding women and home cells for pregnant women			
State	Pregnant	Lactating	Dormitory cells for pregnant women
SP	58	35	10
MA	0	7	1
PR	14	4	4
RS	5	1	3
MS	9	9	4
AC	0	0	3
IF	0	1	1
SC	5	5	3
RR	0	0	0
RO	1	0	2
OTHER STATES*	93	43	38
TOTAL	185	105	69

* RN, RJ, PI, PE, PB, MT, PA, MG, GO, ES, DF, C, BA, AP, AM, AL, TO

Source: SENAPPEN (2023).

The table above points out the 10 (ten) Brazilian states with the highest number of women who faced the effects of motherhood in prison, with the description of breastfeeding women and the cell conditions intended for them.

Motherhood in prison is an especially painful experience. There are countless records of violations of the most basic rights of pregnant women and babies who were born by their lonely mothers, in the cold and fetid soils of the cells of Brazilian dungeons and, soon after, torn from their arms, because there were no appropriate accommodations to house them with their imprisoned mothers (Gurgel, 2017).

Another point related to mothers in prison is the separation from their children. According to Varella (2017, p. 44), "from one moment to the next, he returns to the pavilion of origin and to the routine of repetitive days that drag on in idleness, screaming, locking, loneliness and longing for the baby that they have just lost sight of".

The testimony of one of the mothers incarcerated in prisons demonstrates the drama of having to accept that her child is with relatives, "another one was taken by the Guardianship Council, a third lives with an unknown family and three were stillborn" (Diniz, 2015, p. 27). In the case of Margarete, arrested twice for receiving stolen goods, she commented in a thin voice: "I only don't commit suicide because I hope to get my daughter back when I get out" (Varella, 2017, p. 45).

In his studies, Mello (2008, p. 60) states that "participants who are mothers tend to have a higher average of depressive symptoms than those who do not have children". Diniz interviewed professionals who work in the penal system and inmates in the women's penitentiary. Among the interviewees is Dr. Jamila, who is a psychologist and works hard to alleviate suffering, anguish and motherhood, stating that there is no office per se, but a rescue bay in women's prisons (Diniz, 2015).

In legal terms, Law No. 11,942/2009 amended the Penal Execution Law to ensure that mothers who are deprived of liberty and their children have minimum conditions of assistance during pregnancy and postpartum. Regarding this law, it is appropriate to highlight some points related to article 89, which are: "§ 3 Medical follow-up will be ensured to women, especially in the prenatal and postpartum periods, extending to the newborn" (Brasil, 2009b, art. 14) and also in "§ 2 Penal establishments for women will be equipped with a nursery, where convicts can take care of their children, including breastfeeding them at least until six (6) months of age" (Brasil, 2009b, art. 83).

In addition to the requirements referred to in article 89, the women's penitentiary will be

equipped with a section for pregnant and parturient women and a daycare center to house children over 6 (six) months and under 7 (seven) years of age, with the purpose of assisting the helpless child whose guardian is imprisoned (Brasil, 2009b).

In this sense, it is worth noting that, despite having so many laws, regulations and decrees on the subject, there is still a lack of application and effectiveness of these determinations. In fact, penitentiaries that follow these rules are rare, due to lack of interest, attributing less importance to these issues.

The daily drama of incarcerated women led, in December 2017, Minister Gilmar Mendes of the STF to issue a letter to the then president of the CNJ, Minister Cármem Lúcia, requesting attention to the situation of women imprisoned or hospitalized, pregnant or with children under their care. The STF's statement occurred due to the large number of *habeas corpus* requests that concern women in these conditions. In Official Letter No. 10, the minister requests not only the replacement of preventive detention with house arrest for mothers, pregnant and breastfeeding patients, but also understands that "the issue requires reflection on other measures" (Jardim, 2020, p. 6).

In addition to misogyny actions and behaviors in the daily life of the penal system, there is the absence of daycare centers and better conditions for mothers to have their babies, and the scarce contribution of available financial resources. The data demonstrate the deficiency in promoting an adequate environment for children to remain and develop.

It is noticeable, by analyzing the data in the table below, that the number of babies in prison is significant, especially in some Brazilian states, justifying the understanding of Minister Gilmar Mendes on the subject.

Table 2 – Number of children and infants in the penitentiary system.

Number of children and babies in the penitentiary system				
State	Nurseries	Capacity of children in daycare centers	Nurseries	Capacity of babies in nurseries
SP	5	102	8	117
MA	1	7	1	7
PR	1	10	1	10
RS	1	23	0	0
MS	1	10	4	33
AC	0	0	2	14
IF	0	0	1	5
SC	0	0	3	35
RR	0	0	0	0
RO	0	0	1	7

OTHER STATES*	0	0	29	200
TOTAL	9	152	50	428
RN	0	0	0	20
RJ	0	0	1	0

* RN, RJ, PI, PE, PB, MT, PA, MG, GO, ES, DF, C, BA, AP, AM, AL, TO

Source: SENAPPE (2023).

The situation of abandonment is another marker that generates suffering and violation of women's rights in prison. According to Varella (2017, p. 36), while "society is capable of facing the imprisonment of a male relative with some complacency, the woman denotes shame to the entire family. Thus, when a woman commits a crime, she mischaracterizes the female role."

Society's expectation is to see women "in their place", obedient and demure. Sexual prejudice is part of this context. The bandit may be considered a bad character, soulless, perverse, but no one questions his sex life. On the other hand, when a woman steals, traffics or robs, she is sexually labeled as promiscuous and receives the label of libertine, even if she is a virgin (Varella, 2017). In his activities as a doctor for 11 years in women's prisons, the author reveals that he has never seen or known of anyone who had spent a night in vigil, waiting for visiting hours.

Data from the National Secretariat of Penal Policies (Senappen, 2023) reveal that, for the total of 465,551 incarcerated women, there were 19,551 registered visits. Among the 725,054 men arrested, there were 44,225 registered visitors. In general, the queues in women's prisons are small, with the same predominance of women and children, the male minority is made up of older men, usually fathers or grandfathers. In the case of the testimony of an inmate, she reports that she had eight siblings, but none of them visited her in prison (Diniz, 2015).

For Lemgruber (1999, p. 85), "the importance of contact with the family is multiple and represents, above all, the bond with the outside world. When this bond cannot be maintained, the suffering is immense." The distance from society weakens the bonds that prisoners had before being imprisoned, making them more lonely and, consequently, more aggressive, provoking negative emotions and feelings.

They feel marginalized by their family and others, showing a significant lack of affection. In this scenario, these women establish a dependence on the prison unit, both on their cellmates and on the staff, which highlights their weaknesses.

The experience of prison is painful and severe for these hurt, humiliated, disillusioned, lonely and abandoned women, who discover, in the company of other prisoners, solidarity, understanding, complicity, affection and sexual pleasures that they have never experienced in relationships with

the opposite sex (Varella, 2017).

They enter the prison system with a heterosexual orientation, but most women are abandoned by their partners when they are arrested.

From then on, they develop bonds of affection with other women and often start to maintain romantic and sexual relationships with each other, as they find, in these relationships, ways to make up for the absence of visits and opportunities for interaction, trust and exchange of dreams, pains, sufferings and expectations, once again transgressing the pattern established outside the walls (Gurgel, 2017).

In addition, the series of denial of the human rights of incarcerated women causes mental health problems. The process of isolating women in jail for consecutive years causes behavioral disorders, psychiatric disorders and hinders resocialization. Diniz exposed the account of an inmate regarding the knowledge that a colleague in prison committed suicide: "Janete Maria got tangled up in that way that is taught in prison. He killed himself with madness, the sheet that accommodates sleep was the noose attached to the window grille" (Diniz, 2015, p. 165). The significant increase in the number of incarcerated women can result in the abusive consumption of psychoactive substances and the appearance of past and current psychiatric symptoms (Mello, 2008).

What can be seen is that:

The incarcerated individual goes through a process of acculturation, that is, disablement and desocialization, generating a process of mortification and infantilization of the self, generated by the characteristics of these institutions. Such characteristics can lead to the development or intensification of symptoms of mood disorders, especially depressive ones, and the use of psychoactive substances (Mello, 2008, p. 23).

Living in prison is an arduous task and some inmates never adapt to life in prisons. Among the narratives of women in prison, Diniz writes, it is possible to witness statements such as: "Death was already destiny, I had not eaten or slept for a long time" (Diniz, 2015, p. 166). The dossier of this incarcerated woman described her as depressed and unadapted to prison. She lived in the ghetto of the old, sick and invalid.

In prison, women have their humanity diminished, mental disorders are ignored and emotional illnesses are made invisible. These factors, of course, contribute to increasing the vulnerability of this population.

In terms of gender, women's incarceration has several peculiarities. For this reason, the norms for the female prison population are differentiated, as they cover issues related to: the physical structure consistent with the female gender, specific material needs, motherhood, the permanence of children with their mothers, mother-child separation, family life, abandonment of

the family and others (Brasil, 2008).

Considering that petty drug trafficking and crimes against property represent more than 77% of all crimes among women intercepted by the criminal system, the option in favor of house arrest contributes to mitigating serious violations of the human rights of women who are serving time in a closed regime.

Habeas Corpus *court decisions* that use the International Human Rights document as a parameter, such as the Bangkok Rules, have recommended that these women serve sentences other than deprivation of liberty through house arrest and electronic monitoring. Despite the advances, reality shows that these measures are not being widely implemented. Data available at the National Secretariat for Penal Policies (Senappen, 2023, p. 181) show that Brazil has "10,766 under house arrest, using electronic monitoring".

5 Final considerations

The numerous situations of violation of the Human Rights of incarcerated women in Brazil, in spite of the admission and verification of data revealed by State officials, reveal the continuous disrespect for the Constitutional order and denial of Human Rights, such as the absence of respect for the physical, social and psychological needs of women, confronting the framework of the current Federal Constitution that establishes the principle of individualization of the penal, according to article 5, item XIVIII, according to which: "the sentence shall be served in different establishments, according to the nature of the crime, the age and sex of the convict" (Brasil, 1988). In addition to the constitutional provisions above, it is urgent to think about political-legal measures to reduce female incarceration. Most of those presented here corroborate the impact that segregation has on the family nucleus. Most Brazilian households are headed by women, whose responsibility for supporting and care of children is compromised, since women's imprisonment, especially when the fate of poor women crossed by multiple vulnerabilities is at stake, ends up punishing their offspring, relegating them to abandonment and misery.

Finally, in view of the reality of women's prisons that, as a rule, incarcerate and collect a series of violence and denial of women's Human Rights, it is urgent to rethink the system of female imprisonment. In other words, it is necessary to think about and put into operation public policies for decarceration, to offer alternatives to ensure the psychosocial monitoring of the families involved and to create social public policies of legal acceptance, such as the application of alternative methods of conflict, such as Restorative Justice, to reverse the socio-family drama

among women who commit crimes and enter the crosshairs of repression and criminal control by the State.

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How to cite:

DANESI, Isabella Godoy; LIMA, Cezar Bueno de; CUSTÓDIO, Patrícia Regina Piasecki. Human Rights and Incarcerated Women: Between the Norms of the Law and a Reality to Endure. **Pensar – Journal of Legal Sciences**, Fortaleza, v. 30, n. 2, p. 1-15, Apr./June 2025. DOI: <https://doi.org/10.5020/2317-2150.2025.15774>

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Received: 02/07/2025
Accepted on: 05/23/2025